

STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ANGELA VELASCO, individually and
on behalf of all others similarly situated,

Plaintiff,

-vs- CASE NO.: 08-C-0244

SOGRO, INC.,
d/b/a Budget Host Diplomat Motel,

Defendant.

VOLUME 2

TRIAL hearing in the above-entitled matter, held
before the Honorable Charles N. Clevert, Jr., on the 24th day
of February, 2015, commencing at 8:43 a.m. and concluding at
4:38 p.m.

A P P E A R A N C E S

The Consumer Advocacy Center, PC
Mr. Lance A. Raphael and Ms. Allison A. Krumhorn
180 West Washington Street, Suite 700
Chicago, Illinois 60602
Appeared on behalf of the Plaintiffs.

Tressler, LLP
Mr. James K. Borcia
233 South Wacker Drive, 22nd Floor
Chicago, Illinois 60606-6308
Appeared on behalf of the Defendant, also present.

Ms. Kristine Wilson Brah, Clerk.
Ms. Sheryl L. Stawski, RPR, Official Reporter.

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T R A N S C R I P T O F P R O C E E D I N G S

THE COURT: Yesterday after the jury was excused, the reporter left, and the courtroom deputy stepped out, the Court conducted further proceedings off the record with the idea that the discussions between the Court and counsel would be put on the record this morning.

We talked about multiple exhibits that the plaintiff wishes to have admitted as well as the possibility of the plaintiff offering testimony through one of the plaintiff's law firm's paralegals.

The defense expressed its opposition to most of the exhibits that the plaintiffs wish to present. The exhibits that were the primary focus of the discussions were Exhibits 1, 3, 14, 15, 21, 22, 23, 24 and 26.

The defense stated multiple objections to Exhibit No. 1. They are summarized as follows: A lack of foundation or insufficient foundation; relevance; they're cumulative; and they contain sensitive personal information which should not be disclosed and made part of the record.

The Court indicated preliminarily that Exhibit 1 would be received over the defendant's objections and noted several things, particularly, any sensitive personal information may be sealed or redacted.

The exhibits do not necessarily include cumulative evidence; and even if the evidence is cumulative at this stage,

1 it does not appear that that would preclude receipt of the
2 exhibit.

3 More importantly, the plaintiff -- plaintiffs
4 indicated that they can establish the proper foundation for
5 these exhibits; and the Court, based upon the representations
6 of plaintiff's counsel, is satisfied that the exhibits do
7 provide proof on matters that are significant and relevant in
8 this case.

9 With regard to Exhibit 3, the plaintiffs indicated
10 that they would like to highlight and focus on Pages 2431,
11 2432, 2433, 2438, 2442, 2443, 2444, 2448, 2449, 2452, 2453 and
12 2454.

13 The Court after hearing the arguments preliminarily
14 indicated it is inclined to receive over the defendant's
15 objection Exhibit No. 3, and particularly, materials just
16 referenced.

17 With regard to Exhibit 14, which includes an
18 affidavit, the plaintiff -- plaintiffs indicated that they are
19 not seeking to have the affidavit admitted but, instead, will
20 seek to have the balance of the exhibit received, particularly
21 after the testimony of another witness who will appear as a
22 custodial of records. Preliminarily, it would appear that
23 Exhibit 14 as truncated would be admissible over the
24 defendant's objection.

25 I do not have itemized notes with respect to exhibits

1 21 through -- 21, 22, 23, 24 and 26; and so we'll have to touch
2 on those again.

3 Now, with regard to a summary exhibit, based upon
4 Exhibit No. 1, there was discussion as to whether or not the
5 defendant's paralegal or one of the -- I'm sorry -- one of the
6 plaintiff's paralegals should be allowed to testify with
7 respect to the result of the plaintiff's review of Exhibit
8 No. 1. The defense expressed an objection, first of all, to
9 the use of the summary; and, secondly, to the testimony of the
10 paralegal.

11 The plaintiffs did not identify the particular
12 paralegal who will be available to testify, but one was named
13 Alexis; the other Kimberly.

14 Preliminarily, the Court indicated that not
15 withstanding the failure of the plaintiffs to disclose the
16 identities of these paralegals, the plaintiffs would be allowed
17 to testify with respect to their analysis of Exhibit No. 1.

18 The Court notes that Exhibit No. 1 is represented to
19 be documents that were produced by the defendant in response to
20 the plaintiff's request for the production of documents; and
21 that the exhibit is a substantial stack of materials which
22 appear to be at least 15 to 18 inches tall.

23 These materials are no surprise to the defendant, and
24 the defendant was certainly able to evaluate its own materials
25 and does not, in the Court's view, have a valid reason why it

1 could not analyze the same documents.

2 Nevertheless, the Court has further indicated that if
3 the plaintiffs wish to call the paralegal, in fairness to the
4 defense, the Court will provide the defense with an opportunity
5 to examine the paralegal on the record in the courtroom out of
6 the -- outside the presence of the jury before any testimony is
7 offered in front of the jury by the testifying paralegal.

8 I turn next to plaintiff's counsel to inquire whether
9 or not the Court has accurately recapped our discussions; and
10 if not, the plaintiff's counsel is invited to correct anything
11 that may not have been precisely stated and to supplement the
12 Court's comments respecting the plaintiff's proposed evidence
13 and the discussions that took place yesterday evening until
14 approximately eight o'clock.

15 MR. RAPHAEL: Thank you, Your Honor.

16 I'll go down them numerically with regard to Exhibit 1
17 first.

18 Your Honor correctly summarized the defendant's
19 objections in terms of foundation, relevance, an issue as to
20 the sensitive information and cumulativeness.

21 With regard to the lack of foundation, Your Honor was
22 cited by plaintiff's counsel; the fact that -- a Seventh
23 Circuit case, *U.S. versus Brown*, which is 688 F.2d, 1112, said
24 the lower court found that once a defendant voluntarily
25 produces documents and implicitly represents them to be

1 subpoenaed corporate records cannot be heard to contend they
2 are not so.

3 And this would satisfy the foundation requirement for
4 authentication of records being produced by the defendant. The
5 idea of establishing a foundation beyond their authenticity
6 doesn't exist when you're looking to merely introduce the
7 documents that, in essence, speak for themselves.

8 The *South Central Bank versus Citicorp*, we also cited,
9 Northern District of Illinois case of -- 863 F. Supp. 635 -- we
10 are bound to follow the Seventh Circuit's explicit holding that
11 production of a document amounts to an implicit authentication
12 of a document and disagree that the authentication of a
13 document requires proof of who the author is and that the
14 document was sent or received.

15 In this case even further we know who the author is
16 because Mr. Solus testified that he was the one who was
17 primarily responsible for filling out the registration -- the
18 registration cards and taking credit card receipts, so --

19 THE COURT: I don't think it's really necessary for
20 you to recap all of the citations at this time.

21 Let's just look at the overarching matters so that we
22 can at least determine whether or not Exhibit 1 is as described
23 and whether or not your views have been expressed correctly.

24 MR. RAPHAEL: Yes. And moreover, Your Honor noted
25 that this document was a document that was produced

1 specifically by the defendant in the course of discovery, and
2 we tendered to Your Honor a copy of the cover letter that --
3 that accompanied the production from the defendant's office.

4 I note further that in terms of our re-tender of
5 Exhibit 1 to defendant, in other words when we organized it,
6 I've just looked at the metadata for the file itself. It was
7 started -- It was started on February 18th and was not finished
8 until February 20th at 3:26 p.m.; and that's looking at the
9 actual metadata of the -- of the computerized document that we
10 sent the defendant. So it was timely produced as soon as it
11 was done.

12 In terms of the argument about sensitive nature of the
13 information, we have a protective order --

14 THE COURT: Again --

15 MR. RAPHAEL: Okay.

16 THE COURT: Again, with regard to Exhibit 1 is there
17 anything that the Court stated that --

18 MR. RAPHAEL: No, Your Honor.

19 THE COURT: -- is incorrect?

20 MR. RAPHAEL: No, Your Honor.

21 THE COURT: Are you still seeking to have the Court
22 admit Exhibit 3 as described in the Court's recap?

23 MR. RAPHAEL: Yes, Your Honor.

24 THE COURT: And is there anything regarding Exhibit 3
25 that you believe should be corrected?

1 MR. RAPHAEL: No, Your Honor.

2 THE COURT: All right. Are you still seeking to have
3 admitted Exhibit 14?

4 MR. RAPHAEL: Yes, as truncated not having the
5 affidavit, right.

6 THE COURT: That affidavit is the affidavit of a
7 Mr. Wong?

8 MR. RAPHAEL: Correct.

9 THE COURT: And what about 15, pages 2565 through
10 2605?

11 MR. RAPHAEL: Oh, yes. Yes.

12 THE COURT: Can you just quickly indicate for the
13 record what that particular exhibit and those pages reflect.

14 MR. RAPHAEL: Yeah. Exhibit 15, those pages reflect
15 statements from Paymentech to Sogro, Inc. during a period that
16 starts around May 2005 through December 2007. And it is just
17 the first page of the statements where there would be contained
18 notifications to Sogro, Inc. to take note of various items of
19 input, I guess, and in this case, security features, references
20 to go to the website, references to check on updated software,
21 and so forth, which is relevant to our argument that his
22 violation of the statute was reckless, in part, due to his
23 ignoring these types of notifications.

24 THE COURT: All right. And Exhibits 21, 22, 23, 24,
25 and 26, are you still seeking to have those admitted?

1 MR. RAPHAEL: Yes, Your Honor. Twenty-one, 22, 23 I
2 can put together in one category. These are published
3 documents or published books that come out every year from --
4 from Visa.

5 For example, in 20 and under Rule 803.17, these types
6 of documents would be able to be admitted as an exception to
7 the hearsay rule because they're commercial publications
8 generally used and relied upon by the public or, in this
9 instance, persons in particular occupations.

10 The Visa rules for merchant services attached as 20
11 and -- I'm sorry -- oh, as 21 and 22, those are each the
12 relevant years of these thick manuals. And as the Court can
13 see --

14 THE COURT: Just briefly, what are they?

15 According to the exhibit list, exhibits -- Exhibit 21
16 are the rules for Visa merchants, card acceptance and charge
17 back guidelines 2006.

18 MR. RAPHAEL: Right.

19 THE COURT: Twenty-two would be similar rules for
20 2007.

21 Twenty-three would be the Payment Card Industry
22 Standards for January 2005.

23 Twenty-four, declaration of Carrie Back.

24 And 26 would be an affidavit of Trisha Pugal.

25 Is that -- Can you tell me the basis for seeking to

1 have these particular items admitted.

2 MR. RAPHAEL: Twenty-two, 23 and 24 are the rules and
3 regulations that Sogro agreed to follow under his contract.

4 And those rules for those particular years included
5 the truncation requirements under the FACTA.

6 The declaration of Carrie Back from Discover card
7 identifies as a keeper of records -- well, she authenticates
8 the same type of documents, select portions thereof, of the
9 merchant services agreements for 2002, '04, '06, the operating
10 regulation for years, '02 and '04, and the merchant operating
11 regulation releases on the software from version 7.2, 8.1 and
12 8.2.

13 And those had they been complied with by the
14 defendant, we wouldn't have any violation of FACTA here.

15 THE COURT: Again, what would be the basis for getting
16 these in?

17 MR. RAPHAEL: Oh, that these documents were both
18 available to and urged to be viewed by Sogro prior to and
19 during the time period he violated FACTA demonstrating --

20 THE COURT: Will you offer any witness in support of
21 your request to have these admitted?

22 MR. RAPHAEL: As to the declaration of Carrie Back,
23 yes. Carrie Back will come in.

24 THE COURT: All right.

25 Now, with regard to the other -- Carrie Back will come

1 in, and you will seek to have her declaration admitted for what
2 purpose?

3 MR. RAPHAEL: No, her -- her documents attached to her
4 declaration for the purposes of showing that the defendant
5 violated FACTA with recklessness. Discover cards rules when
6 they were modified were modified to comport with FACTA, and
7 under the defendant's contract with Discover to be authorized
8 to take Discover cards, he had to comport with their rules,
9 which would have, therefore, comported with FACTA.

10 THE COURT: I'm still unclear as to how you will
11 authenticate these particular documents and whether or not
12 there will be a witness who will be tendered for the purpose of
13 getting these particular documents into the record.

14 MR. RAPHAEL: Yes. Ms. Back is the Ohio witness who
15 we intend to have produced.

16 THE COURT: So Ms. Back will be the witness --

17 MR. RAPHAEL: For Discover.

18 THE COURT: -- for Discover through whom you will
19 attempt to get these documents in?

20 MR. RAPHAEL: Yes.

21 THE COURT: All right.

22 Now, with regard to the summary and the paralegal,
23 have you identified a paralegal through whom you will attempt
24 to get in the summary?

25 MR. RAPHAEL: Yes. It's Alexis.

1 THE COURT: What is the last name?

2 MR. RAPHAEL: Raphael.

3 THE COURT: And is she available to testify at this
4 time?

5 MR. RAPHAEL: Yes, depending on when you want her to
6 come in we'll have her take the train in.

7 THE COURT: How much time will you need to get her
8 here? How much notice?

9 MR. RAPHAEL: At most, four hours depending on the
10 train schedule; so if we know --

11 THE COURT: An Amtrak.

12 MR. RAPHAEL: Yeah she's going to take an Amtrak.
13 Yes, I know, Your Honor.

14 THE COURT: That's an iffy situation?

15 MR. RAPHAEL: They're subsidized by the federal
16 government. We love Amtrak.

17 THE COURT: I do, too; but I've been stuck on that
18 train.

19 MR. RAPHAEL: I know, me too. I used to come up here
20 all the time. It comes out of Union Station. It's about an
21 hour and a half.

22 THE COURT: All right.

23 MR. RAPHAEL: We have the schedule. We can, off the
24 record, figure out when is the best time to squeeze her in. If
25 the defendant wants to Skype her in, because it's not something

1 that's going to occur in front of the jury.

2 THE COURT: Well, at least as far as her preliminary
3 statements are concerned, I can understand that; but I do
4 believe under the circumstance we cannot use Skype.

5 MR. RAPHAEL: What about the Court's video
6 conferencing ability just for the preliminary --

7 THE COURT: For the preliminary examination, we can
8 use video conferencing.

9 MR. RAPHAEL: Okay, because that might make it so that
10 we can squeeze her in at any point in time.

11 THE COURT: All right. If you can get that
12 information to our IT person, we will see whether or not we can
13 do that. I note that the video machinery has been set up, and
14 I'm curious whether or not it is now ready.

15 Do you have a witness standing by?

16 MR. RIEDIJK: I'm going to connect right now.

17 THE COURT: If there's a witness standing by, we will
18 interrupt our discussion of the exhibits.

19 MR. BORCIA: I have many things to say about what Your
20 Honor said.

21 THE COURT: Obviously.

22 MR. BORCIA: So I understand we can take it out of
23 order if you want to, but I disagree with many of the things
24 that counsel has said also about what happened last night. So
25 we can take that up later.

1 THE COURT: Absolutely.

2 MR. BORCIA: And one issue with respect to this
3 witness, which we just went through, Judge, is we did not talk
4 about the sub exhibits for this witness, Exhibit No. 14, last
5 night.

6 We did not go through those different exhibits, and so
7 there's going to be objections to many of these exhibits that
8 Your Honor never went through last night.

9 THE COURT: All right. Well, if there are objections
10 that need to be considered and were not discussed last night,
11 we will certainly go through any ongoing objections. Who is
12 the witness standing by. Mr. Raphael?

13 MS. KRUMHORN: There was a snowstorm in Dallas. They
14 all got kind of held up. The court reporter is on her way up
15 to the office, so they are there. I anticipate it will be --

16 MR. RAPHAEL: Will Your Honor permit her to use her
17 cell phone in the courtroom for the moment?

18 THE COURT: For that period, yes.

19 MR. RAPHAEL: Okay. Are we off the record, Your
20 Honor?

21 THE COURT: Yes.

22 (Discussion held off the record.)

23 THE COURT: On the record. Let's hear from you,
24 Mr. Raphael, regarding Exhibit 14; then I'll go to Mr. Borgia
25 but he has expressed some ongoing objections.

1 MR. RAPHAEL: So Exhibit 14, for the record, is the
2 affidavit of the keeper of records of Benjamin Wong, which had
3 attached to it ten exhibits, ten documents, and was sworn under
4 penalties of perjury back in 2011 and was submitted to the
5 Court as evidence in document 81-4 and filed with the Court on
6 April 12th, 2011.

7 Document 14 is presently identified here as Bates
8 numbers 2536 through 2564.

9 MR. BORCIA: Incorrect.

10 MR. RAPHAEL: What are the numbers that you have?

11 MR. BORCIA: 2534 not 36.

12 MR. RAPHAEL: I'm sorry. I misspoke. He's correct
13 2534 through 2564.

14 THE COURT: Yes, I have --

15 MR. RAPHAEL: Okay.

16 THE COURT: -- Exhibit 14 in front of me.

17 MR. RAPHAEL: All right. So presently we are not
18 looking to have admitted the actual affidavit of the keeper of
19 records but rather the records through the use of a
20 subsequently identified keeper of records from Chase Payment,
21 the first document --

22 THE COURT: That person will be?

23 MR. RAPHAEL: Allison knows his name. She stepped out
24 for a second to coordinate with him. I believe it is Robert
25 Boehm, B-O-E-H-M. And he, too, is at the same location that

1 Benjamin Wong had been at which is the headquarters of Chase
2 Paymentech in Dallas. It's at 14221 Dallas Parkway.

3 So he's going to establish the foundation for these
4 records in much the same way as Benjamin Wong did. And while
5 these records were previously submitted to the Court as
6 evidence during various pleadings, and there were no objections
7 to the form of that affidavit not -- not substantiating --

8 THE COURT: Generally speaking, what do the records
9 purport to disclose?

10 MR. RAPHAEL: Well, Exhibit 1 purports to disclose --

11 THE COURT: You're talking about sub Exhibit 1 within
12 Exhibit 14?

13 MR. RAPHAEL: Right, sub Exhibit 1.

14 THE COURT: 14-1, we'll refer to it as.

15 MR. RAPHAEL: Okay, yeah, 14-1.

16 THE COURT: Mr. Raphael, you've got to move it along.
17 We can't just go at glacial speed.

18 MR. RAPHAEL: Sorry, Your Honor, I'm just trying to be
19 precise.

20 Exhibit 1 is a March 21st mailed notice that went out
21 to merchants like the defendant advising them of the federal
22 rules having been updated. The merchant services agreements
23 being updated and giving advice to merchants like Sogro as to
24 how to comply with FACTA. There's a picture of an example
25 customer receipt.

1 Exhibit 2 is also a March 2004 document mailed to
2 merchants and referencing the update in the federal -- with the
3 federal government Visa and MasterCard rules and other state
4 laws that are meant to inform merchants like Sogro to become
5 compliant with FACTA.

6 Exhibit 3 is a publication that Paymentech puts out,
7 and this one was in September of 2004. It's mailed to all
8 merchants that are customers of Paymentech, like Sogro,
9 advising them of the new requirements to become compliant with
10 FACTA.

11 Exhibit 4 is a publication -- another publication
12 created in January of 2005 and mailed to merchants who are
13 customers of Paymentech, again, telling them get compliant and
14 giving them phone numbers and other types of information about
15 FACTA for -- including, I guess --

16 THE COURT: We don't need the excruciating detail.
17 I'm asking for the general descriptions of the documents and
18 why you believe these documents are admissible.

19 MR. RAPHAEL: Well, these are all various forms of
20 notices, publications of various sorts mailed to merchants,
21 like Sogro, to advise them to become compliant. And this would
22 tend to --

23 THE COURT: If they are just mailed to merchants like
24 Sogro, that's not enough.

25 MR. RAPHAEL: No, I'm sorry. I'm not saying it

1 correctly. It's their regular course of -- regular business
2 practice to have sent these --

3 THE COURT: Are you contending that these are
4 documents prepared in the ordinary course of business of
5 Paymentech maintained by Paymentech and sent to Sogro either
6 directly or made available to Sogro at the times indicated on
7 the documents?

8 MR. RAPHAEL: Yes.

9 THE COURT: Get to it. If that's the case, get to the
10 point.

11 MR. RAPHAEL: I'm sorry. That's what all of these
12 documents are. And they tend to show recklessness as to
13 Sogro's violation.

14 THE COURT: Regardless of what you think they show, I
15 just want to know the basis for having these -- your proposed
16 basis for having these documents admitted.

17 MR. RAPHAEL: My proposed basis for having these
18 documents admitted is that the keeper of records will testify
19 that all these documents were made in the regular course of
20 regularly conducted business activity of Paymentech.

21 They were mailed out to their customer merchants,
22 including Sogro, during the regular course of regularly
23 conducted business activity; and then the forms of those
24 documents were stored and saved in a reliable fashion at
25 Paymentech. And they were produced to us in response to our

1 request from Paymentech to produce these business records.

2 THE COURT: All right. Mr. Borcia.

3 MR. BORCIA: No, we have spent -- This case has gotten
4 way off track. We spent so much time yesterday on a document
5 related to --

6 THE COURT: Tell me why these --

7 MR. BORCIA: I'm getting to that, Judge.

8 THE COURT: No, I --

9 MR. BORCIA: I am getting to.

10 THE COURT: I'm going to cut you off. I'm cutting you
11 off for this reason.

12 Both of you go off on a tangent before you get to the
13 point. I don't care about what happened yesterday, generally.

14 I want to know specifically now why you believe these
15 documents are not admissible.

16 MR. BORCIA: This is not a case of Paymentech versus
17 Sogro. Paymentech's regulations, Paymentech's rules are not
18 relevant to this case. The issue --

19 THE COURT: So you're objecting because they're
20 irrelevant. What's the next point?

21 MR. BORCIA: The other objection is, look at the
22 actual affidavit. Mr. Raphael misrepresented the documents.

23 Exhibit No. 1, the affidavit says, Exhibit No. 1 was
24 mailed to certain merchants. Does not say it was mailed to
25 Sogro. Certain merchants is not enough. This document is not

1 relevant. This witness cannot tie down this document to Sogro.

2 THE COURT: If that is the case, then perhaps they
3 will not be received.

4 MR. BORCIA: This witness, who I just learned of about
5 five seconds ago, this witness who was supposed to be called
6 was Benjamin Wong. He was the one disclosed in discovery.

7 The Federal Rules require disclosure of witnesses not
8 categories of witnesses. And for me to have to now learn of
9 this witness five minutes before he is going to be called is
10 wrong.

11 There was interrogatories issued to this plaintiff,
12 disclosure witnesses. There was a pretrial order. Your Honor
13 ordered us to disclose names of witnesses. This gentleman's
14 name is not on either one of them.

15 There's also Rule 26 disclosures. This gentleman's
16 name is not on either -- any of those either. This is not
17 proper procedure to have witnesses pop up during a trial that
18 were not previously disclosed. And the fact that he's a keeper
19 of the records, or purported to be, does not excuse disclosure
20 obligations.

21 The other exhibits in this document reference similar
22 issues. Exhibit No. 2, again references certain merchants.
23 Exhibit No. 3 talks about an industry wire mailed to all
24 merchants. Again, there's no tie-in on this document to Sogro.

25 THE COURT: Again, I note that the plaintiff --

1 plaintiffs are not seeking to utilize the affidavit of Mr. Wong
2 nor Mr. Wong at this time.

3 MR. BORCIA: Here's the problem with that, because if
4 they're not using the affidavit, and it sounds like you're
5 saying, they're going to have this man testify as to something
6 beyond the affidavit, that's not disclosed.

7 THE COURT: Not necessarily something beyond the
8 affidavit. I don't know.

9 MR. BORCIA: Well, it has to be either in the
10 affidavit or not at all because whatever he's going to say, if
11 it's not disclosed, it's not proper.

12 And for him -- If Your Honor is suggesting that this
13 witness can now say something different than what's in this
14 affidavit, not only was he not disclosed but this testimony is
15 not disclosed. He can't do it.

16 THE COURT: All right. Is there anything else with
17 regard to Exhibit 14?

18 MR. RAPHAEL: Your Honor --

19 THE COURT: Mr. Borcia is speaking.

20 MR. RAPHAEL: Okay.

21 MR. BORCIA: Exhibit No. 8. I'm sorry, paragraph
22 number eight talks about Exhibit No. 5 was sent to those
23 merchants who our records showed were using point-of-sale
24 equipment that was noncompliant.

25 What does that mean? And where are the records of who

1 the merchants were who were noncompliant? It's not in this
2 document.

3 I'm just forecasting this now. I see this as a train
4 wreck; and certainly on non-disclosed issues, I don't want to
5 keep interrupting the testimony, Judge; but I'll tell you right
6 now, looks like what's going to happen is, he's going to try to
7 ask him something different than what's in this affidavit.

8 If you look at the affidavit, virtually all of the
9 statements that are made are not tied to Sogro. They are tied
10 to merchants in general. That's not relevant. Or certain
11 merchants; whatever that means.

12 THE COURT: Is there anything else regarding this
13 exhibit and the proposed testimony of the Paymentech custodian
14 of records?

15 MR. RAPHAEL: Your Honor, there was talk --

16 THE COURT: No. Mr. Borcia.

17 MR. BORCIA: There was talk last night about an
18 Exhibit No. 6 -- I'm sorry, Your Honor -- Exhibit No. 9 of a
19 web page.

20 THE COURT: This is 9 of 14?

21 MR. BORCIA: Right.

22 THE COURT: 14-9.

23 MR. BORCIA: Clearly, Exhibit No. 9 is not a web page.
24 We went through that last night. I want to reiterate that was
25 discussed last night.

1 THE COURT: Yes.

2 MR. BORCIA: Other than that I have nothing else.
3 Thank you.

4 THE COURT: Mr. Raphael.

5 MR. RAPHAEL: Real quick, Your Honor.

6 THE COURT: First of all, please address the
7 disclosure argument of Mr. Borgia.

8 MR. RAPHAEL: Page 3 of 43 of document 195 in the
9 Court record, the parties' joint pretrial report. If Your
10 Honor recalls, there were numerous sections of our joint
11 pretrial report that were not joint, which caused some problems
12 with the pretrial conference.

13 This was not one of them. This was the names and
14 addresses of witnesses. And Benjamin Wong or Chase Paymentech
15 keeper of records available to appear by Skype video was the
16 parties' joint production of names and addresses of witnesses.

17 And the defendant objected to all of this back then.
18 This is just the exact same objection here which the Court
19 already ruled on a number of times.

20 Second, the documents that we're seeking to have
21 introduced into evidence that were produced by Chase Paymentech
22 ought to have been produced, if we go back in time, by the
23 defendant when we issued discovery to them asking them to
24 produce all of the documents that they had in their custody and
25 control relating to compliance with FACTA.

1 Chase Paymentech is the entity that Sogro hired.
2 Sogro --

3 THE COURT: That's beyond the point.

4 MR. RAPHAEL: Okay.

5 THE COURT: The point that Mr. Borcia raised and I
6 asked you to address is related to disclosure of the identity
7 of the person or persons who would be called as witnesses and a
8 particular person from Paymentech you envision testifying.

9 MR. RAPHAEL: Yeah. They were disclosed in the final
10 pretrial order.

11 THE COURT: The pretrial report mentions Mr. Wong then
12 alternatively some other person.

13 MR. RAPHAEL: Correct, from Chase Paymentech. And we
14 did not know --

15 THE COURT: When, if at all, did you disclose this
16 person to the defense?

17 MR. RAPHAEL: As soon as we were certain of it, which
18 even at this moment due to the inclement weather, we're not
19 certain of because they were supposed to be there a half an
20 hour ago and are not. But we believe it's going to be, rather,
21 Boehm. I've never spoken to the man.

22 I've had numerous e-mails back and forth with Chase
23 Paymentech trying to nail down exactly who this person would
24 be. And to the best of our knowledge right now it's going to
25 be this person. But if he's not able to show up because of the

1 weather, then they may have someone as an alternative. I just
2 don't know.

3 And just to make it clear, all these objections that
4 Mr. Borcia is raising are form over substance. There's no
5 surprise here because this person is not testifying to anything
6 other than the exact same documents that have been in the
7 record for years.

8 These are -- there's -- He's not going to discuss
9 things outside of establishing the foundation for the way these
10 records have been created, used in the ordinary course of
11 business, stored in a reliable fashion at Chase Paymentech in
12 the ordinary course of business and so forth.

13 THE COURT: All right. I know -- I understand your
14 position.

15 The Court is going to give Mr. Borcia an opportunity
16 to voir dire this particular witness outside the presence of
17 the jury in a fashion similar to what is contemplated with
18 respect to the plaintiff's paralegal.

19 It is certainly no surprise that someone who is a
20 custodian of records of Paymentech is to testify on behalf of
21 the plaintiffs.

22 The documents with regard to such testimony have been
23 tendered previously and have been provided in conjunction with
24 other proceedings in this case; and, therefore, it would appear
25 that the defendant has had an opportunity to view and decipher

1 the documents as noted by some of the argument of Mr. Borcia
2 today.

3 The Court certainly has to consider whether or not it
4 will be fair or unfair to permit this witness to testify.
5 Inasmuch as the documents are no surprise, the Court does not
6 believe it will be unfair; and certainly it would be consistent
7 with the search for truth that the plaintiffs be allowed to
8 call a person who is identified as custodian of records.

9 Now, it certainly is also in the Court's view
10 appropriate to give to the defense this chance to examine the
11 witness to determine whether or not she or he is, in fact, able
12 to provide testimony that is certainly supported by whatever
13 credentials or familiarity this witness has with the practices,
14 procedures, and records of Paymentech. That is the reason for
15 the examination outside of the presence of the jury.

16 Now, if this witness is not now available, we will
17 return to our discussion of other exhibits.

18 Is the witness still unavailable?

19 MS. KRUMHORN: The court reporter is still setting up.
20 She was having a problem with the ethernet cable. Should I
21 interrupt --

22 THE COURT: Yes. Please let us know as soon as you
23 get word that everything is set up and we can proceed with the
24 witness.

25 MS. KRUMHORN: Okay. Thank you.

1 THE COURT: Mr. Borcia, I believe you'd like to be
2 heard regarding some additional matters.

3 MR. BORCIA: Yes, Your Honor. Going back to the
4 Court's discussion on our discussions last night.

5 I don't believe you accurately summarized in total at
6 least Exhibit No. 1 in terms of our objections.

7 THE COURT: All right.

8 MR. BORCIA: The primary objection we had to this is
9 that allowing introduction into evidence of thousands of
10 receipts and registration cards is allowing into evidence proof
11 from individual class members.

12 This case is not about plaintiffs, plural. There is
13 one plaintiff in this case, Angela Velasco. There are no other
14 plaintiffs in this case. There was a class that she is
15 representing. That class -- None of those class members are
16 identified as witnesses.

17 If the Court allows into evidence the evidence from
18 the individual class members, that will require us to inquire
19 into the details of the individual transactions for these
20 classes members; and that's important because Your Honor has
21 already ruled that only consumers can collect under the
22 statute. Only consumers have claims.

23 These receipts do not demonstrate whether, in fact,
24 these are consumers, or businesses -- cards, or business
25 transactions.

1 So if that evidence is allowed into the record, we
2 will have to have individual inquiries into these receipts in
3 terms of whether the card is an individual card or a business
4 card; the transaction was a business transaction or a consumer
5 transaction.

6 There is no one in this courtroom identified as a
7 witness who will be able to establish those facts. Certainly
8 Mr. Solus cannot do that. Certainly the plaintiff cannot do
9 that. I don't believe she's talked to any class members.

10 So that would leave the jury with the obligation to
11 speculate based upon a stack of receipts from witnesses they
12 have not heard whether those receipts are for consumer purposes
13 or nonconsumer purposes. And that is the antithesis of a class
14 action.

15 A class action is where a class representative can
16 establish all of the elements of proof for the class members;
17 and but for the ability to do that, introducing these
18 individual -- these individual elements for class members into
19 evidence in this lawsuit is inappropriate.

20 The issue of redaction is one that this case is based
21 upon the plaintiff's claim that there is a privacy interest in
22 these receipts. And I don't believe these class members have
23 any idea at this point in time that this Court is going to
24 allow into evidence in this lawsuit receipts with their
25 class -- with their credit card numbers on them.

1 So I think it's a real problem in this case which is
2 supposed to be about protecting privacy that we are now putting
3 into evidence in the case their names, when they stayed at the
4 motel, their credit card information, the amount they -- the
5 amount they paid. None of this has been with their approval.
6 So I don't believe it's proper for many -- including the
7 reasons Your Honor said -- to put these receipts into evidence
8 in this lawsuit.

9 The issue of Exhibit No. 14, we went -- I think we
10 went through most of that already.

11 Exhibit No. 15 -- I'm sorry, I skipped Exhibit No. 3,
12 Your Honor. The pages from Exhibit No. 3 are not relevant
13 because they go to -- basically they are activity reports.

14 The first document I believe Your Honor referenced was
15 2431, and that activity report from Paymentech, number one, is
16 pages 1 of 3 but only document page number one is attached. I
17 don't even know what pages two and three are.

18 But it references simply -- and this is, again,
19 2003 -- I'm sorry, 2004. This is long before FACTA even became
20 required. And it references nothing about FACTA. It
21 references that there's a Paymentech website that can be gone
22 to.

23 There's no tie-in to -- on that date. Even if there
24 was a suggestion to go to the site, what would that site say?
25 So without that tie-in, it's not relevant to the issues in this

1 case.

2 And the same analysis goes to 2432.

3 2433 is a Discover activity report which, again, does
4 not reference FACTA. I'm not sure what the purpose of it --
5 the relevance is of admitting this is. Doesn't seem to be
6 relevant to any issues in this lawsuit.

7 2438 is, again, a Discover activity report from May of
8 2004. Again, no reference to FACTA; no reference to
9 truncation. And, again, this is -- It says page one of two.
10 No idea what page two is.

11 2442, similar. This is a -- purports to be a
12 three-page document. Only page one is attached. Again, no
13 reference to FACTA or truncation.

14 2443 is a one-page Paymentech statement with just a
15 cover page of the statement dated September of '04. Again, no
16 reference to FACTA; no reference to truncation.

17 2444 is a similar Discover three-page document that
18 only contains page one. Again, no reference to truncation; no
19 reference to FACTA.

20 So similar objections, I think, flow to the other
21 documents within this exhibit.

22 THE COURT: All right.

23 MR. BORCIA: Exhibit No. 15 is our statements from
24 Paymentech to Sogro which are cherry-picked, one-page documents
25 out of entire statements that, again, don't reference FACTA; do

1 not reference truncation; not relevant to the issues in this
2 case.

3 The reference to -- to learn about a feature, visit
4 Paymentech.com, again, there's no tie-in to -- even if you went
5 to the website on that date, what would it say? How is this
6 relevant to this lawsuit?

7 Exhibit 21, which counsel referred to as the books
8 from Visa, I have no idea what witness is going to introduce
9 the foundation for these documents. There is no witness
10 disclosed from Visa. Mr. Solus can't authenticate the
11 documents. I doubt very much that the Paymentech or the
12 Discover witnesses can identify or authenticate Visa manuals.
13 And so certainly there's been no disclosure of any witness that
14 could authenticate the foundation for this document.

15 Beyond that --

16 THE COURT: I would assume the same objection would
17 apply to the similar exhibits, ie., 22, 23, 24 and 26?

18 MR. BORCIA: Yes, and --

19 THE COURT: All right.

20 MR. BORCIA: The other issue is relevance. This is
21 not a case about Visa or Discover or American Express and
22 whether or not Sogro met their rules.

23 And this -- We spent half the day yesterday, Judge, on
24 a contract with Mr. Solus and Paymentech. This is not a breach
25 of contract case. This is not a case of whether or not

1 Mr. Sogro met Visa's rules or Discover's rules. This is about
2 a federal statute. The complaint is limited to a federal
3 statute. There's no breach of contract claims here. And yet
4 we are getting into whether or not Sogro breached its agreement
5 with Paymentech, Visa, Discover. That's not what this case is
6 about. And that element has taken over this case.

7 The fact that Visa had whatever rules they had on
8 truncation, or Discover had, that is not the issue in this
9 case.

10 The issue in this case is a single claim on a federal
11 statute whether or not that statute was violated. That's it.

12 So beyond just the fact there's no witness to
13 authenticate these documents, handing a jury a book of here's
14 Visa's rules and plopping it on a desk and say, here; that's
15 not relevant to the claims in this case. I don't see Visa
16 being a plaintiff. Why are we getting into all these Visa
17 regulations and Discover regulations?

18 If, in fact -- Let's pose a hypothetical. If FACTA
19 was never enacted, would these documents have any claim at all
20 or any relevance? Absolutely not. The plaintiff here has no
21 standing to raise any kind of claim on behalf of any of these
22 credit card companies or Paymentech.

23 THE COURT: That's certainly true, and these --
24 whether or not there was a breach of contract is not certainly
25 a clear issue in this case. So I will ask the plaintiffs to

1 comment on why these particular documents should be received.
2 But I'll let you finish first.

3 MR. BORCIA: Thank you, Your Honor.

4 I think in terms of -- In terms of --

5 THE COURT: Please move it along because we have a
6 jury sitting in the room, and I want to make sure that they are
7 not frustrated to the point of becoming, let's say, less than
8 attentive to your case.

9 MR. BORCIA: I'm trying, Judge.

10 Exhibit 26, I think is what counsel referred to as the
11 Discover exhibits to the declaration of Ms. Back; and, again --

12 THE COURT: One second.

13 MR. BORCIA: Sure.

14 (Discussion held off the record.)

15 MR. RAPHAEL: They can know that there's a storm in
16 Texas, I guess. That way we can blame it on that.

17 MR. BORCIA: The issue of the documents for Ms. Back,
18 which I think is Exhibit No. 25, Judge -- I may have
19 misspoke -- again, these are -- apparently, the one introduced
20 Discover's rules, Discover's regulations. And, again, it's the
21 same issue.

22 THE COURT: All right.

23 MR. BORCIA: So I won't repeat it, but I think Your
24 Honor --

25 THE COURT: There's no reason to repeat. I

1 understand.

2 MR. BORCIA: And that also attaches activity reports,
3 which are similar to the activity reports -- I think some of
4 these are duplicate documents in Exhibit 25 that were in the
5 prior documents.

6 MR. RAPHAEL: Your Honor, the activity report that's
7 in there --

8 THE COURT: Let him finish, please.

9 MR. BORCIA: I was done, Judge. Thank you.

10 MR. RAPHAEL: I was going to say it's in there in
11 error.

12 THE COURT: Twenty-five?

13 MR. RAPHAEL: Yeah, whatever activity report --

14 THE COURT: I did not have 25 listed. I have 21, 22,
15 23, 24 and 26.

16 MR. RAPHAEL: I was just addressing what he was
17 saying.

18 MR. BORCIA: Counsel misspoke. I think he meant to
19 say 25 because 26 is the affidavit of Ms. Pugal.
20 Twenty-five -- I assume what he's talking about are, those are
21 the documents -- the Discover affidavit, at least in my book.

22 THE COURT: All right.

23 Mr. Raphael.

24 MR. RAPHAEL: Yes, super brief.

25 As to these rules for Visa merchants, Your Honor

1 wanted me to comment on them.

2 THE COURT: Yes.

3 MR. RAPHAEL: All right. Well, it's the plaintiff's
4 burden to show that Solus violated the law with reckless
5 disregard; not just he violated the law.

6 So all these rules, regulations, and other materials
7 that he ignored that would have brought him into compliance
8 with FACTA demonstrate bit by bit the vast nature of his
9 reckless conduct because not only did he disregard the federal
10 statute claiming I had no idea about it, he disregarded the
11 rules that he was bound to under a contract because he never
12 read those. Then he disregarded all these notices that were
13 sent to him that told him about the rules, told him about,
14 also, the federal statutes, the state statute that exists here,
15 and explained to him in a point-by-point fashion how to comply.

16 Specifically, Your Honor, if you were to look at --
17 and I'm going to direct you to exhibit what -- yeah, Exhibit
18 21, page 26.

19 THE COURT: How do you envision getting Exhibit 21
20 into the record?

21 MR. RAPHAEL: Oh, okay. I was just going to go to the
22 relevance part; but if you want me to move on, fine.

23 Number one, the Court -- This would come into the
24 record because it's authenticated. It's a judicial notice of
25 adjudicated facts -- I'm sorry. There's --

1 Actually, there's a number of ways. First it is, 201,
2 judicial notice of adjudicated facts.

3 THE COURT: There's been no prior request that this
4 Court take judicial notice of this particular document or
5 similar documents. And, generally speaking, if you were to
6 make such a request, the defense should have an opportunity to
7 address that.

8 MR. RAPHAEL: Uh-huh.

9 THE COURT: And, secondly, how can this Court take
10 judicial notice of this particular document when there's no
11 showing by you that this is something that a court should look
12 at or has looked at or would in any way be brought to the
13 attention of the court.

14 MR. RAPHAEL: Uh-huh.

15 Well, typically, my understanding is when you ask the
16 court to take judicial notice -- or you do it at the time
17 you're seeking to introduce it; so I would have done it during
18 the course of the conclusion of Chase Paymentech's testimony on
19 the other things referencing -- going to these documents; but
20 in addition to that, under Rule 803.17, there's a commercial
21 publication generally used by the industry, which these are.
22 These are all operating guidelines used by the entire
23 federally-regulated banking and credit industry that are
24 published on a yearly basis and under *Montalvo versus Bekins*,
25 which is 613 F. Supp. 2d, 892, Southern District of Texas 2009,

1 these types of publications would come in.

2 If you note that these publications, for example,
3 number 21, they are copyrighted materials by Visa. They are --
4 They are the complete version of those documents with not only
5 page numbers on every page, but where they're intentionally
6 left blank there's a notation for things like that.

7 So there's no indication whatsoever that these
8 documents are not what they purport to be.

9 THE COURT: Is there anything else that would support
10 receipt of the rules of the various credit card companies?

11 MR. RAPHAEL: Yes, I'm sorry, one more item.
12 Mr. Borcia opened the door to the introduction of these
13 documents also for rebuttal purposes because he stated in his
14 opening, and Mr. Solus reiterated it during his direct, that
15 somehow this is all to blame on Paymentech not me.

16 These documents set forth the actual and true
17 relationship between the parties and who's responsible for
18 what.

19 Compliance with FACTA is the responsibility of the
20 merchant themselves who owns or leases the point of service
21 terminal not the processor who is the intermediary, as
22 Mr. Borcia explained to the jury, between your bank and the
23 merchant's bank.

24 The Visa rules for merchants explains, guess what,
25 it's the merchant's responsibility to be compliant. Oh, in the

1 agreement between Mr. Sogro -- I'm sorry, between Sogro, Inc.
2 and Paymentech says, you are required to follow the Visa rules,
3 the Discover rules, whatever card association rules that you
4 are seeking to get authority to accept.

5 THE COURT: All right. Is there anything else?

6 MR. RAPHAEL: I believe these rules are also in the
7 public record because they are filed every year with the
8 government, but I'd have to go find another copy of these.

9 THE COURT: All right. Do we have our witness
10 available?

11 MS. KRUMHORN: They're still having the Internet
12 issues. They were actually wondering if they could do it via
13 phone.

14 THE COURT: Mr. Borcia.

15 MR. BORCIA: I need to be able to see the witness.

16 MR. RAPHAEL: I can let him see the witness on my
17 computer here, but -- because of the storm they must have no
18 Internet at the moment.

19 THE COURT: We will have to come back to this witness
20 at a later time.

21 MR. RAPHAEL: We can do the direct of our client at
22 the moment if that will move things up.

23 THE COURT: Let's take a short break, and that will
24 give you a chance to figure out how you want to proceed. We'll
25 come back to these evidentiary issues as warranted. We'll take

1 about a ten-minute break.

2 THE BAILIFF: All rise.

3 (A recess was taken from 10:01 a.m. to 10:32 a.m.)

4 THE COURT: I would like to inquire as to the status
5 of the plaintiff's witness in Dallas.

6 MR. RAPHAEL: Your Honor, I have the plaintiff's --
7 I'm sorry. I have the witness's lawyer on the phone right now.
8 If she can dial in, she can give you an update as to their
9 situation there directly.

10 THE COURT: What do you understand the situation to
11 be?

12 MR. RAPHAEL: I understand the situation to be that
13 they don't have, for some reason, WiFi. I've proposed a number
14 of --

15 THE COURT: They're having an Internet connection
16 problem?

17 MR. RAPHAEL: Yeah, they have a no-Internet-connection
18 problem. The lawyer says, can we call in because, you know,
19 the witness can be cross-examined just as easily on the phone
20 as over --

21 THE COURT: I need to know whether or not there is a
22 problem establishing a connection to Dallas so that the witness
23 can testify by video.

24 MR. RAPHAEL: Yes. They cannot access the Internet
25 for some reason.

1 THE COURT: And is there anything else that is
2 problematic with regard to this witness's testimony?

3 MR. RAPHAEL: Yes. There is a storm impending that is
4 of such magnitude that the lawyer for the witness has said to
5 me that they will likely leave as soon as they are done giving
6 their testimony here today.

7 They do not believe that Paymentech, being part of the
8 company, will be open tomorrow because of the storm in Dallas.
9 They don't have the type of equipment we have up here to deal
10 with things like this. And so they're -- They all sound very
11 nervous to me as to them sitting there right now.

12 THE COURT: What do you propose as a solution to this
13 problem other than having the witness testify by phone?

14 MR. RAPHAEL: I have no other solution that I can even
15 think of because my backup via Skype wouldn't work given the
16 fact that they don't even have Internet connection.

17 I would re -- renew my request that the documents
18 attached to Benjamin Wong's affidavit be admitted into evidence
19 in support of Benjamin Wong's affidavit. And in lieu of that,
20 I would ask that the witness be allowed to establish the
21 foundation for the documents over the phone.

22 It's just an act of God at this point that is
23 preventing me from authenticating literally just documents with
24 the keeper of record. And these documents are -- oh, I would
25 say, absolutely central to the entire case of the plaintiff

1 because they directly demonstrate the defendant's recklessness
2 with regard to violating the statute.

3 THE COURT: All right. Let me turn to the defense.

4 MR. BORCIA: The issue in this situation is one that I
5 was concerned about weeks ago that when the Court over my
6 objection allowed Skype testimony, this is one of the problems
7 that can happen with allowing this type of --

8 THE COURT: This isn't Skype testimony.

9 MR. BORCIA: Well, it's video testimony that I
10 objected to.

11 THE COURT: That's different.

12 MR. BORCIA: And the general federal rules is that,
13 you know, you have to have witnesses live.

14 This is Mr. Raphael's case. We're in his case. He
15 has the burden of proof. He has the burden to bring witnesses
16 to the courtroom. And over my objection, Your Honor allowed
17 video testimony.

18 I don't know what's going on in Dallas. I do know
19 that I'm very concerned about where this case is at this point
20 in time. This jury has been delayed this morning for more than
21 an hour and a half now because of this situation. That is no
22 cause of the defense. We are in the plaintiff's case, and the
23 plaintiff should have a witness here to testify and doesn't.

24 THE COURT: All right. And what is your position
25 respecting telephonic testimony? Do you persist in your --

1 MR. BORCIA: Yes.

2 THE COURT: -- position that the witness should come
3 to court?

4 MR. BORCIA: Yes. Witness -- Telephone testimony
5 doesn't allow either me or the jury to view the witness's
6 demeanor, his -- his nonverbal gestures. It's just not
7 sufficient. And certainly the federal rules, I don't believe,
8 allow, generally speaking unless there's a stipulation,
9 telephone testimony.

10 THE COURT: All right.

11 MR. RAPHAEL: We're again speaking about a record
12 keeper.

13 THE COURT: All right. Let me just get to the bottom
14 line. The Court is not going to authorize the witness to
15 testify by telephone. However, the Court will give you an
16 opportunity to have this witness testify later in the case.

17 The next question is, when, if at all, will the
18 witness be available to testify later in the case? Now it is
19 uncertain when that witness can testify.

20 And so what I would like to do is to have the clerk
21 attempt to get the witness and/or the witness's lawyer on the
22 phone to discuss the availability of the witness to testify at
23 another time.

24 MR. RAPHAEL: The number for the witness's lawyer is
25 (214)849-3437. And I can hang up with them right now.

1 Christina, are you there? The Court is going to call you.

2 Okay. One minute. All right.

3 THE CLERK: What is the lawyer's name?

4 MR. RAPHAEL: Christina.

5 MS. KRUMHORN: Vitale, V-I-T-A-L-E.

6 THE CLERK: Thank you.

7 MR. BORCIA: I would just like to make one further
8 note. This witness was known to the plaintiff during the
9 discovery period.

10 The plaintiff actually got an affidavit from this
11 witness or from who was supposed to be this witness, Mr. Wong,
12 during the discovery period.

13 This witness was not deposed. For whatever reason,
14 the plaintiff chose not to depose this witness. And all of
15 this could have been avoided had the plaintiff actually done
16 due diligence and deposed this witness.

17 THE CLERK: Ms. Vitale.

18 MS. VITALE: Yes, I'm here.

19 THE CLERK: You're on the speaker system in the
20 courtroom in Judge Clevert's chambers. Thank you.

21 MS. VITALE: Good morning, Your Honor.

22 THE COURT: Good morning.

23 I have you on the speaker phone in the courtroom, and
24 it has been brought to the Court's attention that the custodian
25 of records who was to testify today is unable to testify

1 because of several problems and, in particular, an inability of
2 someone in Dallas to establish an Internet connection needed to
3 provide the video testimony due to a snowstorm that is under
4 way.

5 Can you confirm that that is so?

6 MS. VITALE: Yes, Your Honor. We at Paymentech
7 provided the ethernet and the modem for the court reporter to
8 connect. She was able to register the connection on her
9 laptop, but for some reason we are unable to get any web page
10 or any Internet connection to show up on her computer.

11 We are also faced with a continuing snowstorm. The
12 roads were a little better today, but it's supposed to get
13 worse as we go towards the late afternoon/evening with black
14 ice hitting the roads. And, unfortunately, we are not as
15 equipped as the Midwest to handle the snow and the ice in
16 Texas. There are no snowplows. They barely put salt on the
17 roads. And it's very dangerous because the ice is just
18 completely covering the roads.

19 So I don't even think Paymentech will be open
20 tomorrow, maybe even into Thursday. So that is why we were
21 hoping that we could do this limited narrow scope of testimony
22 as to the foundation of the documents by telephone.

23 THE COURT: All right. Will the witness be available
24 to testify at a later time if this matter -- if the witness's
25 testimony cannot be given today because of the reasons you have

1 stated?

2 MS. VITALE: It would depend when, Your Honor. I
3 mean, he has basically cleared his schedule for yesterday and
4 today waiting around to testify.

5 I believe there was a manager's convention going on
6 which he is missing. And if Paymentech is not open, you know,
7 tomorrow and through the next day, it's difficult to predict.

8 You know, of course we'll make accommodations as Your
9 Honor decides; that it would be ideal and less of a burden on
10 the witness to testify by telephone for the limited scope of
11 authenticating these particular documents.

12 THE COURT: All right. Thank you very much.

13 We will have a discussion. I will have a discussion
14 with the lawyers at this time. And I will excuse the witness
15 from testifying today.

16 The Court is considering whether or not to give to the
17 defense an opportunity to examine the witness prior to the
18 witness testifying here in court.

19 Can the witness be made available for that purpose on
20 a date other than the actual trial date?

21 MS. VITALE: You mean, Your Honor, like next week
22 or --

23 THE COURT: Perhaps later this week. What I have in
24 mind at this time is the possibility of continuing this trial
25 into next week.

1 MS. VITALE: Maybe. I would need to consult with the
2 witness and just see his schedule and make sure he's not
3 traveling or anything.

4 It's just -- You know, we have the witness here. We
5 have the court reporter here. I'm here. We're all here. And
6 the defense would have an opportunity to cross-examine, you
7 know, by telephone.

8 We have produced the witness like the, you know, Court
9 had wanted and cleared his schedule for yesterday and today.
10 We even drove in yesterday when Paymentech was technically
11 closed. It was very difficult. And I would just hope that we
12 can lessen the burden on this witness if we just go by
13 telephone today for the limited scope of the document
14 authentication.

15 THE COURT: The defense has not had an opportunity to
16 examine this witness and is claiming, among other things, that
17 the identity of the witness was not previously known to the
18 defense; and, therefore, the witness should not be allowed to
19 testify at all.

20 But notwithstanding that, the Court has indicated that
21 the witness will be allowed to testify subject to prior
22 examination outside of the presence of the jury. Because we
23 are in -- we are in trial, and the jury is in the jury room,
24 the Court does not at this time believe it can allow the
25 defense to conduct that examination here and now.

1 Instead, the examination will have to take place prior
2 to any in-court or live testimony in front of the jury. I am
3 looking at my schedule. And in light of what you've said,
4 there certainly is the possibility of conducting further
5 proceedings in this case later this week or the first part of
6 next week. I certainly understand the weather problem which
7 certainly complicates matters.

8 MS. VITALE: Your Honor, if you would indulge me,
9 could you maybe give us a little bit of time to think outside
10 the box here and be creative because I would hate to have us
11 all come back and, you know, just have to reconvene especially
12 with the weather unpredictability and schedules of everyone.

13 Would you be willing to give us about an hour to try
14 and figure this out? Maybe we think outside the box creatively
15 and get an Internet connection somehow.

16 THE COURT: I think that would certainly be very, very
17 helpful; and perhaps it will bear fruit.

18 MS. VITALE: Okay. I appreciate that, Your Honor.

19 THE COURT: So I will have the -- Would you please
20 call back within an hour and you can talk with my staff. And
21 to the extent we can, we'll then try to get back on the phone
22 here in the courtroom to see how we may be able to proceed.

23 MS. VITALE: Yes, Your Honor. What is the best number
24 to reach your staff at?

25 THE COURT: (414)297-1585.

1 MS. VITALE: Okay. Will do. Thank you so much.

2 THE COURT: Thank you.

3 MS. VITALE: Bye-bye.

4 THE COURT: What I would like to do is continue with
5 the testimony of Mr. Solus at this time unless you have another
6 witness available.

7 MR. RAPHAEL: We can do our plaintiff.

8 THE COURT: Does the defense object to interrupting
9 the testimony of Mr. Solus and the Court hearing the
10 plaintiff's testimony?

11 MR. BORCIA: No, Your Honor.

12 THE COURT: All right. All right. We'll put the jury
13 on notice that we will start in five minutes or so. All right?

14 Please get all of your exhibits concerning this
15 witness together so that you can seamlessly proceed with her
16 testimony.

17 If there are exhibits that you plan to use but have
18 not specifically identified for the defense, please make sure
19 that the defense is fully apprised of what exhibits you
20 envision using during the course of the witness's testimony.

21 MR. BORCIA: Judge, could I just make one comment?

22 THE COURT: Yes.

23 MR. BORCIA: Just for scheduling purposes, I'm not
24 sure how long you're planning to go today. I do have a
25 commitment for my son tonight. If we could leave at 4:45,

1 5:00. I just want to make sure we're not going to go late
2 because I need to be somewhere for him tonight, if that's okay
3 for you.

4 THE COURT: We'll break.

5 MR. BORCIA: I want to give you a heads up on it.

6 THE BAILIFF: All rise.

7 (The following proceedings were held in the presence
8 of the jurors.)

9 THE COURT: Again, I must apologize to you, members of
10 the jury. We've been delayed this morning for a variety of
11 reasons that include weather-related problems and Internet
12 connection problems.

13 Also, I do want to bring to your attention that this
14 is one of those times when we will be proceeding in an unusual
15 way.

16 The Court is interrupting the testimony of the prior
17 witness, Mr. Solus, so that the named plaintiff, Ms. Velasco
18 can testify at this time.

19 This witness is, of course, being called by the
20 plaintiff who will proceed.

21 Mr. Raphael.

22 MR. RAPHAEL: Yes, Ms. Velasco, would you step up.
23 And be sworn.

24 (The witness was first duly sworn under oath.)

25 THE CLERK: Please state your full name for the record

1 and spell your last name.

2 THE WITNESS: Angela Christine Velasco, V-E-L-A-S-C-O.

3 THE CLERK: Thank you.

4 D I R E C T E X A M I N A T I O N

5 BY MR. RAPHAEL:

6 Q Good morning. Ms. Velasco, where do you work?

7 A In Jewel Food Stores.

8 Q Located where?

9 A 4042 West Foster Avenue in Chicago.

10 Q How long have you worked there?

11 A Twenty-two years.

12 Q And what do you do there?

13 A I'm a deli clerk.

14 Q Do you have any kids?

15 A I do.

16 Q How many?

17 A Four.

18 Q And how old?

19 A Sixteen, 13, and then I have a six-year-old and a
20 four-year-old.

21 Q Okay. Have you ever taken them on vacation?

22 A Not since I've had all four.

23 Q Okay. Fair enough. When was -- Here, let me take you more
24 directly.

25 Have you ever been up to Lake Geneva for a vacation

1 or --

2 A I have. When I had the two child -- When I had the two
3 children and then when I had my third one I had been up there.

4 Q Okay. And you stayed obviously at what hotel?

5 A We stayed at the Budget Host Motel.

6 Q Budget Host Diplomat Motel?

7 A Yes.

8 Q The one in Lake Geneva. All right.

9 And do you know where that's located in terms of a
10 street, or do you remember?

11 A (No response.)

12 Q No. All right. Who did you go there with? Which kids?

13 A I have been there with my two oldest kids.

14 Q Okay.

15 A And I was there one time with my daughter, also.

16 Q What did you do while you stayed there?

17 A Swim and then go on, like, the boat tours. They have boat
18 tours. Horseback rides, but we didn't go on them. We just
19 show the kids they have a horse and a carriage and go by the
20 beach.

21 Q And one of the times you stayed there was June 25th, 2007?

22 A Yes.

23 Q And checked out on June 26th, 2007?

24 A Yes.

25 Q And how did you pay for your visit?

1 A With a credit card.

2 Q Okay. I'm going to show you a document numbered 2463,
3 which is Exhibit 6, tab 6 in the book; and it should be up on
4 the screen. Do you see it?

5 And is that your signature there?

6 A It is.

7 Q All right. And did the motel provide you with a copy of
8 that receipt?

9 A They did.

10 Q All right. And if you look, does that receipt contain your
11 full credit card number and expiration date and full name?

12 A It does.

13 Q Okay. And that's the same information that would be on the
14 front of your credit card that you used, right?

15 A Yes.

16 Q Did you file this lawsuit?

17 A No, I did not.

18 Q How did you find out about it?

19 A Through a class action -- a paper that came to me in the
20 mail.

21 Q Okay. So you had heard some of the questions to members of
22 the jury about class actions and receiving class action notices
23 in the mail, and you received one from this case?

24 A I did.

25 Q And so that's why you became involved with this?

1 A Yes. That's how I became involved.

2 Q Okay. And what specifically happened that you remember as
3 a reason for you to become the named plaintiff or become the
4 head of the class action?

5 A I believe I was -- I save my files and I go through them
6 every year. And I just -- I called back and asked, you know,
7 is this a paper that I should keep or throw away.

8 And then I kept it every time. They let me know there
9 was a trial coming up, and then that they'd always get back to
10 you about what happens, because it's a class action, so
11 everybody would know about it after the case was settled.

12 But then the person who was in charge of the case
13 left, and they needed somebody to come forward and say, yes, I
14 was there, and I did use my credit card and my numbers were my
15 whole numbers with the expiration date printed on the receipt;
16 so that's why I'm here today.

17 Q Okay. And why -- what caused you to want to take part and
18 step up when the named plaintiff no longer wanted to continue?

19 A Because, like I was explaining, there was a wrongdoing that
20 could lead to identity theft with the numbers and -- and the
21 expiration date.

22 And I was a part of the class. And I came so that
23 this won't -- you know, so that -- I guess this won't happen.
24 The numbers -- We knew that something was wrong; and to come
25 forward; that I would be one of the persons; that it won't

1 happen again or --

2 Q Nothing happened to you specifically, though, right?

3 A No.

4 Q You kept your credit card receipt after this?

5 A I did.

6 Q And what did you do with it?

7 A I usually shred -- Every year I go through my papers, my
8 old papers. And then -- And then if they're not good, if I
9 don't need them any more, I shred them.

10 Q And do you know if you shredded this one?

11 A Most likely.

12 Q Okay.

13 A That's my kids' fun. They put the papers in the shredding
14 machine. Like every year that's what we do, we clean out the
15 cabinet.

16 Q Okay. So then if you kept your credit card receipt and
17 shredded it, so what's the problem that you see that happened
18 in this case with printing off the receipts for all other class
19 members? If you know.

20 A That -- I do know now -- I do know that there's not
21 supposed to be so many numbers on the receipt; just like your
22 bank statements, they cross out so many and -- with Xs and then
23 leaving only a few of the last numbers. So it was something --
24 it was too many numbers. It was where that can lead to
25 identity theft.

1 Q Okay. And so you know that they're not supposed to do that
2 then?

3 A I know there's many laws; they don't allow you to -- how --
4 yeah.

5 MR. RAPHAEL: Okay. All right. Nothing further.

6 You can stay there.

7 THE COURT: Cross?

8 MR. BORCIA: Yes, Your Honor.

9 C R O S S - E X A M I N A T I O N

10 BY MR. BORCIA:

11 Q Good morning, ma'am.

12 A Good morning.

13 Q You live in Chicago?

14 A I do.

15 Q And you've lived in Chicago for how long?

16 A My whole life. Do you want me to tell you my age?

17 Q I don't need to hear your age.

18 Counsel asked you about your visits to the Budget
19 Motel. Do you recall that?

20 A I'm sorry.

21 Q He asked you about your visits to the motel.

22 A Yes.

23 Q He asked you who you went there with?

24 A He asked me. Yeah, I've been there a few times.

25 Q He asked you who you went there with.

1 A Yes. As far as -- Specifically for the one time, yes.

2 Q And you mentioned your children?

3 A Yes.

4 Q And anyone else with you?

5 A I've been there a few times. The first time I've been
6 there was Labor Day Weekend before the school started. That
7 was with my mother. She's the first one who will bring us out
8 there. She always stays like for two days. I go for one.

9 So the first time I went was with my -- I went. I
10 drove my car. My mother -- I met my mother there with my
11 sister -- my sister. They drive together.

12 The second time I went with my two children. And then
13 the third time when I used the credit card was with my
14 boyfriend and my two children.

15 Q What is your boyfriend's name?

16 A Randy Hilgart, H-I-L-G-A-R-T.

17 THE COURT: One second, please. I'd like to see
18 counsel at sidebar.

19 (A sidebar was held.)

20 (The following proceedings were held at sidebar.)

21 THE COURT: They have now established an Internet
22 connection. I just looked at the --

23 MR. RAPHAEL: So when he's done with this, then we can
24 go with them.

25 THE COURT: How much --

1 MR. RAPHAEL: It shouldn't be too long.

2 THE COURT: All right.

3 (The following proceedings were held in the presence
4 of the jurors.)

5 MR. BORCIA: Could I have the last question and answer
6 read back, Judge?

7 THE COURT: Go ahead.

8 (The last question and answer were read back by the
9 reporter.)

10 BY MR. BORCIA:

11 Q Are you married, ma'am?

12 A Divorced.

13 Q So you went with your boyfriend, Randy, and your two
14 children?

15 A Yes.

16 Q Now, counsel asked you some questions about why you're here
17 today. Do you recall that?

18 A Yes.

19 Q Now, when you went to the motel, you had no problems with
20 the motel in terms of your stay there?

21 A I did not.

22 Q And you paid for your room?

23 A I did pay for my room.

24 Q Okay. And the -- You used your credit card to pay for the
25 room?

1 A I did.

2 Q Now, when you got the credit card receipt, you made no
3 complaints about the receipt, did you?

4 A I did not.

5 Q And your receipt had the full number on there?

6 A It did.

7 Q And you saw Mr. Solus at the motel when you were there?

8 A I did.

9 Q And you didn't say to Mr. Solus, there was a problem with
10 this receipt, did you?

11 A I did not.

12 Q And, in fact, you didn't know anything about this lawsuit
13 until you got a notice about it?

14 A That is correct.

15 Q And the notice that you got about the lawsuit, it advised
16 you a lawsuit was already filed, correct?

17 A Yes.

18 Q And that it was pending, right?

19 A Yes.

20 Q And when was the next time after you received that mailing
21 that you heard about the lawsuit?

22 A The next time -- I only -- They only sent one flier out,
23 and then I'd call; and they said there was a case that was
24 pending. So you just save the paper. Then -- You know, if a
25 year passed by and I still had the paper like sitting around,

1 then I'd call and say is this something I should save.

2 Q You didn't keep your receipt from the motel, did you?

3 A I did not.

4 Q So the motel that had your number on it, you threw away?

5 A I shredded it.

6 Q And there was no identity theft for you, correct?

7 A There was not.

8 Q You kept the receipt the entire time until it was shredded?

9 A In a filing box, yes.

10 Q Now, you became involved in this lawsuit not because you
11 were concerned about identity theft, correct?

12 A Correct.

13 Q You became involved in this lawsuit because the plaintiff's
14 law firm called you?

15 A Well, I called them. Well, I called them; and when the
16 person left, then they called me, asked me -- because I was a
17 person who was there and used the credit card. It was
18 something that was filed before me.

19 Q And the person that called you and asked you, they asked
20 you to become the plaintiff in this case?

21 MR. RAPHAEL: Sidebar, Your Honor.

22 THE COURT: Overruled.

23 THE WITNESS: Yes. When somebody leaves, then they
24 need somebody else to come.

25 BY MR. BORCIA:

1 Q Now, counsel asked you why you're here today; and you said
2 something about you were concerned about -- there was a
3 violation?

4 A Yes.

5 Q You're here today because you want to collect money?

6 A I could -- Honest to God, I could care less. I'm still
7 going to live with or without. It's -- A class action means
8 that everybody -- if something -- a lawsuit that everybody has
9 a part of.

10 Q So you're not -- you're not seeking any damages in this
11 case?

12 A Nothing is -- There's a case that is pending, and I'm here
13 to testify.

14 Q Ma'am, are you asking for money damages in this case?

15 A I am not.

16 Q Now, the issue of the receipt that you received from the
17 motel, when you were called to become the plaintiff, that
18 receipt was gone at that point in time?

19 A Yes, it was.

20 Q And after you became involved or asked to be involved with
21 the case, you became the class representative, correct?

22 A Yes.

23 Q Okay. And -- But you haven't spoken with any members of
24 the class?

25 A I have not.

1 Q So you don't know for example, why they went to the motel?

2 A No, I do not.

3 Q You don't know if they used a business credit or a personal
4 credit card?

5 A I do not know.

6 Q You don't know if any of those individuals went to the
7 motel for business reasons or for pleasure?

8 A No, I do not.

9 MR. BORCIA: That's all I have. Thank you, ma'am.

10 MR. RAPHAEL: Redirect, Your Honor.

11 THE COURT: Go ahead.

12 MR. RAPHAEL: Thank you.

13 R E D I R E C T E X A M I N A T I O N

14 BY MR. RAPHAEL:

15 Q You stayed at the hotel in 2007. That's the receipt that
16 we were looking at before, right?

17 A I did.

18 Q All right. And you know the lawsuit wasn't filed until
19 after you stayed there?

20 A I do.

21 Q Okay. So you couldn't have known, obviously, about the
22 lawsuit at the time you stayed there because it didn't exist at
23 the time, did it?

24 A It did not.

25 Q Okay. When you received notification of the lawsuit -- I

1 can't remember what you called it, whether it was a flier or
2 what opposing counsel called it -- but that was a court notice.
3 It had the caption of this lawsuit on it, didn't it?

4 A It did.

5 Q And just to make sure that there's no issue --

6 THE COURT: Counsel, no editorial comments. They're
7 not necessary.

8 MR. RAPHAEL: All right.

9 BY MR. RAPHAEL:

10 Q Do you know how much money your claim is worth in this
11 lawsuit?

12 MR. BORCIA: Objection, Judge.

13 THE COURT: Objection sustained.

14 MR. RAPHAEL: He asked if she was looking for --

15 THE COURT: I said -- You don't argue with me.

16 MR. RAPHAEL: Okay.

17 BY MR. RAPHAEL:

18 Q Well, you said you weren't seeking money for yourself.

19 Are you seeking damages for the class?

20 A It's everybody in the class. I mean, that's what a lawsuit
21 is. It's everybody in the class.

22 Q Okay.

23 A It's not for yourself. It's everybody who was there.

24 Q And you consider yourself a member of the class?

25 A I do.

1 MR. RAPHAEL: Okay. Thank you.

2 THE COURT: Mr. Borcia.

3 MR. BORCIA: No further questions.

4 THE COURT: Does the jury have questions of the
5 witness? If so, prepare your notes and hand them to the
6 bailiff.

7 Does anyone wish to have that opportunity?

8 (No response.)

9 THE COURT: All right. You're excused.

10 We will have to take another short break. The IT
11 person has to come back to the courtroom with a video screen so
12 that we can proceed with other testimony.

13 So as I've said previously, do not conduct any
14 discussions with other members of the jury unless -- concerning
15 this case unless all members of the jury are present; and, of
16 course, also, avoid any information that might be available on
17 YouTube or Skype or whatever because you're not supposed to do
18 any research and consider only -- are to consider only the
19 testimony and evidence admitted here in the courtroom.

20 We'll try to start as quickly as we can and hopefully
21 we will get our connection.

22 (The following proceedings were held outside the
23 presence of the jurors.)

24 THE COURT: Is there any matter the parties wish to
25 address with respect to logistics or evidentiary matters that

1 we can dispense with in just a couple of moments?

2 MR. RAPHAEL: No, Your Honor.

3 THE COURT: All right. The IT man will be here as
4 quickly as he can get all the equipment back, and we'll start
5 after the connection has been made.

6 And I do want you to know that I have to take a
7 swearing in of a lawyer at noon or a little thereafter.

8 MR. RAPHAEL: Just fresh out of the wrapper or --

9 THE COURT: I'm not sure. I'm not sure whether
10 someone is seeking to get admitted in this state or some other
11 state because I do have to handle matters for people in other
12 states.

13 Just recently, in fact last week, I had to swear in
14 somebody who wanted to be admitted to the Illinois Bar.

15 MR. RAPHAEL: We have reciprocity, don't we?

16 THE COURT: Under certain circumstances.

17 THE CLERK: All rise.

18 (A recess was taken from 11:20 a.m. to 12:05 p.m.)

19 (The following proceedings were held outside the
20 presence of the jury.)

21 (The witness appearing in the video was first duly
22 sworn under oath by the court reporter in Dallas, Texas.)

23 TEXAS REPORTER: Did you all want to put any
24 stipulations or agreements in the record?

25 THE COURT: There are no stipulations or any of those

1 matters. We're in the midst of trial, and this is live trial
2 testimony.

3 Mr. Raphael --

4 Well, let me do it this way. I will give to the
5 defense the opportunity to ask initial questions outside the
6 presence of the jury inasmuch as the defense has expressed some
7 concern respecting the testimony of this witness and his
8 ability to testify in this proceeding.

9 Mr. Borgia, do you wish to take advantage of that
10 opportunity at this time?

11 MR. BORCIA: Yes, Your Honor.

12 THE COURT: All right. Proceed.

13 E X A M I N A T I O N

14 BY MR. BORCIA:

15 Q State your name, sir.

16 A Robert Lee Boehm.

17 Q Where do you work?

18 A For Paymentech, LLC.

19 Q What is your position?

20 A It's a group executive for clients at work and
21 implementations.

22 Q Have you reviewed any documents to prepare for your
23 testimony today?

24 A I'm sorry, can you restate that?

25 Q Have you reviewed any documents to prepare for your

1 testimony today?

2 A I reviewed the documents attached to the affidavit, yes.

3 Q Okay. And the affidavit you're speaking of Mr. Wong's
4 affidavit?

5 A Yes, sir.

6 Q Who is Mr. Wong?

7 A He is a director within the --

8 Q Who is Mr. Wong?

9 THE COURT: Can you move a little bit to your left --
10 further left, please. Further left. To your left. That's
11 great.

12 Proceed, Counsel.

13 MR. BORCIA: There's a question pending.

14 THE WITNESS: Ben Wong is a director within the
15 relationship management team --

16 THE COURT: Repeat that slowly, please.

17 THE WITNESS: Ben Wong is a director within the
18 relationship management team.

19 BY MR. BORCIA:

20 Q Is he currently employed by Paymentech?

21 A Yes.

22 Q All right. And the only documents you reviewed were his
23 affidavit and the documents attached to the affidavit?

24 A Correct.

25 Q And now do you have the document in front of you, the

1 affidavit with the documents?

2 A Yes, sir.

3 Q If you can turn to the affidavit and specifically Exhibit
4 No. 3.

5 Now, you didn't prepare this affidavit, correct?

6 A Correct.

7 THE COURT: One second.

8 MR. RAPHAEL: Can we cite to the page number?

9 MR. BORCIA: 2534.

10 THE COURT: Do you have that in front of you?

11 THE WITNESS: Yes, sir.

12 BY MR. BORCIA:

13 Q Okay. If we go to paragraph three of that affidavit. Mr.
14 Wong, states a review of Paymentech's records reflect that
15 Sogro was a Paymentech merchant. Do you see that?

16 A Yes.

17 Q Do you know what records he's referring to there?

18 A I witnessed via a screen share with a customer service
19 manager the ability to validate that particular merchant and
20 the merchant number type to that relationship.

21 THE COURT: Yes. Go ahead.

22 BY MR. BORCIA:

23 Q I'm not sure I understand the answer. Can you repeat that,
24 sir.

25 A I spoke with the customer service manager and via a screen

1 share I was able to view that particular merchant record
2 displaying the merchant ID related to this account.

3 Q And who did you speak with?

4 A Debbie Sisic.

5 Q Who is she?

6 A She's a customer service manager.

7 THE COURT: Please spell the name of the customer
8 service manager.

9 THE WITNESS: I believe it's Debbie, D-E-B-B-I-E.
10 S-I-S-I-C.

11 MR. RAPHAEL: Can I ask the witness, can you --
12 wherever the speaker phone is, move it as close to you as
13 possible.

14 THE WITNESS: A lot better?

15 MR. RAPHAEL: Well, you can make it as close as you
16 want just so that you can speak into it real loud.

17 THE WITNESS: Okay.

18 BY MR. BORCIA:

19 Q So you're not -- You're not sure what Mr. Wong reviewed,
20 but what you're saying is you reviewed a screenshot?

21 MR. RAPHAEL: Your Honor, I'm going to object because
22 it's outside what Your Honor's scope was.

23 THE COURT: Go ahead. I'll allow it. Proceed.

24 THE WITNESS: I reviewed a screenshot related to this
25 particular merchant account.

1 BY MR. BORCIA:

2 Q I understand that. But you're not sure what records Mr.
3 Wong reviewed?

4 A No, sir, I'm not.

5 Q And you didn't prepare this affidavit?

6 A No, sir, I did not.

7 Q Now, paragraph four states Exhibit 1 attached to the
8 affidavit is a document created on or about March 4 --
9 March 2004. Do you see that?

10 A Yes, I do.

11 Q If we can reference Exhibit No. 1 there, do you have that
12 handy?

13 A Yes, I do.

14 Q Okay. And are you able to confirm that Exhibit No. 1 was a
15 document created on or about March 2004?

16 A Yes, sir, I am.

17 Q How?

18 A For two reasons. I was part of the project team at the
19 particular time where this initiative was taking place.

20 And then, secondly, reviewing an internal document
21 that contained the metadata attached to the slide that
22 indicated a creation date of March of 2004.

23 Q Where is that metadata?

24 A It's contained within the document.

25 Q Okay. Is there a date on the document I'm missing?

1 The document, Exhibit No. 1, itself does not have a
2 date, correct?

3 A That's correct.

4 Q But you're saying that from metadata you're able to
5 determine the date of creation?

6 A Correct.

7 Q And now it states here that the document was mailed to
8 certain merchants. Do you see that?

9 A That's correct.

10 Q All right. And --

11 MR. RAPHAEL: Your Honor, again, I'm going to object
12 to any sort of cross-examination of something we're not even
13 intending to bring in. Just Mr. Wong's --

14 THE COURT: Overruled.

15 MR. RAPHAEL: Okay.

16 BY MR. BORCIA:

17 Q When it says mail, would that have been U.S. Mail?

18 A Yes, sir.

19 Q And it says certain merchants. Who were the certain
20 merchants?

21 A A project team determined based on the type of equipment a
22 merchant was using if there was a high probabiltly of that
23 terminal not being compliant so that would have -- that was our
24 target audience for the communication.

25 Q Okay. And do you know whether or not Sogro would have been

1 included in those certain merchants?

2 A I do not have knowledge related to Sogro related to this --
3 the mailings.

4 Q Okay. Now, it says Exhibit No. 2, if you can refer to
5 that, would your answer be the same for Exhibit No. 2 in terms
6 of where it says certain merchants; you can't tell whether or
7 not that mailing was ever mailed to Sogro?

8 A That's correct.

9 Q Okay. Now, Exhibit No. 3, it says it's a publication. Do
10 you see that?

11 A Yes, sir.

12 Q And where was the publication? Where was it published?

13 A The publication was created in order to communicate to all
14 of our merchant base related to any --

15 THE COURT: You said related to any, and then would
16 you go and repeat what you said earlier.

17 THE WITNESS: Any card brand changes or
18 compliance-related items.

19 BY MR. BORCIA:

20 Q And just -- My question, I guess, was different. Maybe my
21 question wasn't good enough, artful enough.

22 When it's published, is that something that you
23 actually put out in some publication or something you mail, or
24 both?

25 A This type of document generally would be mailed to

1 merchants.

2 Q Okay. Was this one mailed or --

3 A Yes, sir.

4 Q Okay. And it was mailed, it says, to all merchants. Do
5 you see that?

6 A Yes, sir.

7 Q All right. So that would have been all merchants within
8 Paymentech's system at that point in time?

9 A That is correct.

10 Q And the date of September of '04, where does that come
11 from?

12 A Again, viewing the document, looking at the metadata
13 contained within the document confirmed the creation date of
14 September of 2004.

15 Q Okay. But that's -- that's when the document was created,
16 correct?

17 A That is correct.

18 Q That would not tell you necessarily the date that it was
19 mailed?

20 A Correct.

21 Q So are there any records that would tell you when it was
22 actually mailed?

23 A I do not have those records.

24 Q I assume there's no record that would show specifically
25 this publication being mailed to Sogro; is that correct?

1 A That's correct.

2 Q And would your answer for paragraph seven, Exhibit No. 4,
3 be the same as with the prior exhibit in terms of that
4 publication in terms of your answers to that publication as
5 well; the same answers you'd give for that?

6 A Related to Sogro and whether they received this
7 communication?

8 Q Right.

9 A Yes, the answer would be the same.

10 Q Okay. Now, in Exhibit No. 4, do you see there's a
11 reference there to noncompliance fees? Do you see that?

12 A In the actual exhibit?

13 Q Yes. Exhibit 4.

14 MS. VITALE: Your Honor, if I may interject, Exhibit 4
15 is not being offered into evidence based on agreements with
16 Lance Raphael.

17 MR. BORCIA: That's not what we were told.

18 THE COURT: The defense is -- The plaintiff is
19 attempting to get this particular exhibit into evidence?

20 MR. RAPHAEL: No, I'm withdrawing that exhibit because
21 I understand that this witness doesn't have the same foundation
22 for it as Mr. Wong does.

23 THE COURT: All right.

24 MR. BORCIA: Well, that doesn't mean I can't ask him a
25 question about it.

1 MR. RAPHAEL: Yes, but we're not moving to have it
2 entered into evidence.

3 MR. BORCIA: Okay.

4 BY MR. BORCIA:

5 Q Do you see there's a reference to noncompliance fees in
6 Exhibit 4?

7 A Yes, I do.

8 THE COURT: What is the relevance of this,
9 Mr. Borcia --

10 MR. BORCIA: Well --

11 THE COURT: -- in light of the plaintiff's intention
12 not to offer this exhibit?

13 MR. BORCIA: The relevance is, Judge, that apparently
14 counsel wants to go down the path of noncompliance with Visa
15 and MasterCard and American Express. There's no evidence
16 that -- I believe of any noncompliance assessment against my
17 client.

18 THE COURT: Well, the purpose of this examination is
19 to ascertain whether or not this witness is qualified to
20 testify in front of the jury. So I will direct that you
21 proceed to another question. This matter is irrelevant.

22 BY MR. BORCIA:

23 Q So you're not able to, though, authenticate Exhibit No. 4;
24 is that correct, sir?

25 A I am familiar with the document in that -- in that I was

1 part of the project team; so this is a familiar document.

2 Q You said is a familiar document?

3 A It's a familiar document; me being a part of that project
4 team.

5 MR. BORCIA: Okay. Well, based on counsel's
6 representation that he's not going to go into Exhibit No. 4,
7 I'll move on.

8 BY MR. BORCIA:

9 Q Exhibit No. 5, sir, there's a reference there to -- it
10 looks like a form letter. Do you see that?

11 A Yes, sir.

12 Q Are you familiar with that document?

13 A Yes, sir, I am.

14 Q How?

15 THE COURT: One second please. Would you please
16 repeat your answer.

17 THE WITNESS: Via the same contact within the merchant
18 customer service group, Debbie Sisic. I was able to review
19 this document via a screen share.

20 BY MR. BORCIA:

21 Q And the -- this document is simply a template, correct?

22 A That is correct.

23 Q And it doesn't have any specific information as to Sogro?

24 A That is correct.

25 Q In fact, the contact name and all that, that's all blank or

1 just a form, correct?

2 A That is correct.

3 Q Now, there's a reference in the second-to-last paragraph
4 where it says, you -- attempted to contact you via phone. And
5 it's got specific dates in there. Do you see that?

6 A I do.

7 Q Is that just part of the template?

8 A This part is a template. And once the agent can pull the
9 form down, they can populate those things.

10 Q All right. So this wouldn't have any reference to Sogro
11 being called on those dates?

12 A That is correct.

13 Q And there's no record that you're aware of that this letter
14 was ever sent to Sogro?

15 A That is correct.

16 Q Okay. If we can move on to then to Exhibit No. 6.

17 There is a reference there to a printout where it says
18 the current version of the account number truncation rules. Do
19 you see that?

20 A Are you looking at the affidavit or --

21 Q Yeah, I'm sorry. I'm sorry, sir. I'm looking at the
22 affidavit, Exhibit No. 6, and paragraph nine of the affidavit.

23 A Can you repeat the question?

24 Q Sure. Sure. Is that printout, what was at the time of
25 Mr. Wong's affidavit, the then current version of the account

1 number truncation rules on the website?

2 A Yes, sir.

3 Q So that would have been what was in place in 2011 when Mr.
4 Wong signed this affidavit?

5 A This document was printed in 2010, then signed this
6 affidavit in early January. This document was printed in 2010.

7 Q So that's what existed in 2010?

8 A That's correct.

9 Q So this would not be what would have existed back -- let's
10 say back in the time period of 2006, 2008, correct?

11 A This document dates back to 2008 with the printed date of
12 2010. There could be changes related to this document prior to
13 that, but the content would be very similar.

14 Q But there's no printout from 2008, correct?

15 A That is correct.

16 Q And then if he can move on to number seven, Exhibit 7 which
17 is part of paragraph ten.

18 A Yes, sir.

19 Q Would your answer be the same for that exhibit as the prior
20 exhibit in terms of what that document consists of?

21 A Yes, sir. I would say that the information dates back to
22 2008 but printed in 2010.

23 Q When you use the date or the year 2008, you have a time
24 period in that year?

25 A Yes, sir, April.

1 Q April. Okay. April of '08 forward you're saying, correct?

2 MS. VITALE: Say it again, Counsel.

3 MR. BORCIA: Sure. April of '08 going forward.

4 THE WITNESS: April of 2008 until subsequent changes
5 were possible.

6 BY MR. BORCIA:

7 Q I got it, okay. All right. Then if we go to Exhibit
8 No. 9. I'm sorry, I'm going to skip one. Exhibit No. 8, sir,
9 which is -- it says it's a text of an earlier version of
10 Exhibit 6 posted on our website on or before October 24, 2007.

11 Do you see that?

12 A And, again, you're looking at Exhibit 9?

13 Q I'm sorry, Exhibit 8.

14 A Exhibit 8. I'm sorry, can you repeat the question?

15 Q Sure. That document is a -- the text of an earlier version
16 of Exhibit No. 6. It says it was posted on or about
17 October 24, 2007.

18 A Yes, sir. That is correct.

19 Q And that -- You know that date how?

20 A It was printed at the bottom of the page.

21 Q So all you're going off of is whatever the screenshot says
22 at that point in time, correct?

23 A Yes, and validating similar information on archive.org.

24 TEXAS REPORTER: Counsel, I can't hear you. You're
25 way in the background.

1 MR. RAPHAEL: We don't require you to record or report
2 anything, ma'am. We have a court reporter here.

3 TEXAS REPORTER: Oh, my gosh, Judge. Okay. Okay.

4 MR. RAPHAEL: Please just --

5 THE COURT: Stand by, please. Can the witness hear
6 us?

7 THE WITNESS: Yes.

8 THE COURT: Go ahead. Mr. Borcia, ask another
9 question, please.

10 BY MR. BORCIA:

11 Q Exhibit No. 9, moving on in paragraph 12, it states that
12 Exhibit No. 9 in the affidavit is a true and correct copy of a
13 text of an earlier version of Exhibit No. 8. Do you see that?

14 A Yes, I do.

15 Q Now, Exhibit No. 8 was a screenshot, correct?

16 A Correct.

17 Q Now, is Exhibit No. 9 a screenshot?

18 A No, it's a document.

19 Q So -- I got it. So this is the text -- One is the
20 affidavit, say, an earlier version of Exhibit No. 8.

21 A You're looking at Exhibit No. 9 and -- Can you repeat the
22 question again?

23 Q Sure. In Mr. Wong's affidavit, in paragraph 12 he says,
24 Exhibit No. 9 is a true and correct copy of the text of an
25 earlier version of Exhibit No. 8.

1 Exhibit No. 8 appears to be -- I think you
2 confirmed -- a screenshot, but Exhibit No. 9 is not a
3 screenshot. I'm wondering why did Mr. Wong describe it in that
4 manner?

5 MR. RAPHAEL: Objection. Mischaracterizes what it
6 says. He didn't say it was a screenshot.

7 THE COURT: Well --

8 MR. RAPHAEL: It's text.

9 THE COURT: -- can the witness understand the question
10 as asked? Counsel, would you restate your question?

11 MR. BORCIA: Sure.

12 BY MR. BORCIA:

13 Q I'm just trying to get some clarity as to why Mr. Wong used
14 the language in paragraph 12 where he says, Exhibit No. 9 is a
15 correct copy of the text of an earlier version of Exhibit
16 No. 8, when Exhibit No. 8 was a screenshot of a website, and
17 Exhibit No. 9 you said is a document?

18 MR. RAPHAEL: Your Honor, the witness has already
19 testified. I object. Lack of foundation.

20 THE COURT: Objection overruled. That objection is
21 overruled. Is there another objection?

22 MR. RAPHAEL: The witness has already testified he
23 didn't go through Mr. Wong's affidavit.

24 THE COURT: That objection is overruled. Is there
25 another objection?

1 MR. RAPHAEL: Form of the question; but other than
2 that, no.

3 THE COURT: That objection is overruled. Can the
4 witness answer the question if you can recall it?

5 THE WITNESS: So the question is, why does then --
6 answer -- Can you restate the question, please. My apologies.
7 BY MR. BORCIA:

8 Q I'll try again. No problem.

9 Maybe I'll try to make it more clear.

10 So Exhibit 8, you said, was a screenshot of a website,
11 correct?

12 A Correct.

13 Q Exhibit 9 you said is a document?

14 A Yes.

15 Q So the words that Mr. Wong used was, Exhibit 9 was the text
16 of an earlier version of Exhibit No. 8.

17 And my confusion is, because one is a website printout
18 and one's a document, do you know why he used that language?

19 A I do not know.

20 Q Going to Exhibit No. 9, what is that document?

21 A It's the text version of what was contained on Exhibit 8.

22 Q And when you -- I'm sorry, I didn't mean to cut you off.
23 Finish your answer. I didn't mean to cut you off. I'm sorry.

24 A It would be a text version of Exhibit 8 that clearly calls
25 out the specific reference information needed for Exhibit 8.

1 Q But Exhibit No. 9 has different information than Exhibit
2 No. 8, correct?

3 MR. RAPHAEL: Objection; mischaracterizes Exhibit 9.

4 THE COURT: Overruled.

5 THE WITNESS: The information should be the same, but
6 on Exhibit 8 you have links opposed to the actual e-mail
7 address. So it's not going to be exact reference material.

8 BY MR. BORCIA:

9 Q Well -- But it's different than that, isn't it, sir?

10 If you look -- Take, for example, Exhibit No. 8 -- Let
11 me ask this question first.

12 When -- Exhibit No. 9, when was that created?

13 A This would have been on or before October of 2007.

14 Q How do you know that?

15 A My apologies. I mean, we're talking about Exhibit 9 or we
16 were talking about Exhibit 8?

17 Q Exhibit 9?

18 A Exhibit 9 is the text version. So my apologies, I don't
19 have the specific date of -- that date of that document.

20 Q Well, we know it's different than Exhibit No. 8, don't we,
21 sir, because, for example, if you go to Exhibit No. 8, you will
22 see that it lists a number of states. Do you see that?

23 A Yes.

24 Q And one of those states elicited in Exhibit No. 8 is the
25 state of Wisconsin.

1 A Yes, sir.

2 Q And are you saying there would have been a link on the site
3 to that state?

4 A Yes, sir.

5 Q Okay. And but the link wasn't printed out for Wisconsin,
6 correct? All we have here is the actual -- Correct.

7 A Correct.

8 Q Okay. Now, let's go to Exhibit No. 9. That has a number
9 of states listed on pages -- I guess it's page two -- starting
10 on page two of the document through the end of the document,
11 correct?

12 A Correct.

13 Q And you got -- You do not see Wisconsin listed, correct?

14 A I do not.

15 Q So these are different, correct? Exhibit No. 9 is
16 different than Exhibit No. 8?

17 A Correct.

18 Q So let's finally go to Exhibit No. 10. And this states
19 that Exhibit No. 10 is a printout of the earlier version of our
20 merchant support center section of our website posted on or
21 about October 24, 2007?

22 A Yes, sir.

23 Q Now, that document has a printout date of October 24, 2007,
24 correct?

25 A Correct.

1 Q And other than that date being printed on the page, do you
2 have any other way to verify as to when that was first posted?

3 A No, sir.

4 Q So when it says on or before October 24, 2007, it could
5 have been on that date or it could have been before that date;
6 but you can't tell us which one?

7 A Correct.

8 MR. BORCIA: Okay. That's all I have, Judge. Thank
9 you.

10 THE COURT: All right. Does the defense wish to be
11 heard further respecting this witness's ability to testify in
12 front of the jury?

13 MR. BORCIA: Yes.

14 THE COURT: All right. Very briefly.

15 MR. BORCIA: Well, I think in terms of the -- many of
16 the documents, I think in terms of how the -- part of the
17 problem is, the witness has talked to Ms. Sisic. That would
18 be -- the foundation to that would be hearsay.

19 THE COURT: He did not testify to any statements of
20 Ms. Sisic for the purpose of proving the truth of the matter
21 asserted; so that objection is overruled. Go ahead.

22 MR. BORCIA: I mean, certainly some of the things that
23 are in the affidavit are different than what he is saying.

24 So, I mean, my overall problem with it, Judge, is that
25 there -- and maybe this is just inherent with Mr. Wong's

1 affidavit -- that he can't testify to many of the things that
2 are in the affidavit in terms of any kind of relevance tie-up.

3 For example, the witness testified to the fact that he
4 can't tie these documents to Sogro make this entire line of
5 questioning irrelevant.

6 THE COURT: Overruled. That objection is overruled.
7 What's your next objection?

8 MR. BORCIA: That's all I have.

9 THE COURT: All right. The witness will be allowed to
10 testify in front of the jury. The Court is satisfied that he
11 has the requisite knowledge to testify as a record custodian on
12 behalf of Paymentech.

13 Now, the next question is how we will proceed with
14 respect to the examination of this witness. I'd like to
15 inquire of the witness as to his availability to testify later
16 today, if necessary.

17 THE WITNESS: Yes, I can be available.

18 THE COURT: I ask because the jury is in the jury
19 room, and they're starving. And I want to give them a chance
20 to have lunch. And if that will -- If the witness will be
21 available, say, in one hour, we'll proceed in one hour with
22 your testimony in front of the jury.

23 Will you be available notwithstanding the weather
24 problem there?

25 THE WITNESS: Yes, sir, I would.

1 THE COURT: Excellent. Thank you so much.

2 We will commence at -- Let's commence at quarter to
3 2:00; so we're -- in an hour and five minutes.

4 MR. RAPHAEL: Can we -- Off the record right now.

5 (Discussion was held off the record.)

6 THE COURT: We will commence in approximately an hour.
7 Thank you. We will call back.

8 MS. VITALE: Thank you so much.

9 THE BAILIFF: All rise.

10 (A lunch recess was taken from 12:40 p.m. to 1:55
11 p.m.)

12 MR. RAPHAEL: Your Honor, I'd like to call our next
13 witness, Mr. Boehm.

14 (The witness was first duly sworn under oath.)

15 THE CLERK: Thank you.

16 THE COURT: We have a frozen frame. Mr. Boehm, can
17 you hear us?

18 THE WITNESS: Yes, I can. My understanding is that it
19 can freeze, but that it will come right back.

20 THE COURT: One second.

21 THE CLERK: Would you please state your full name and
22 spell your last name for the record.

23 THE WITNESS: Yes, it's Robert Lee, and the last name
24 is Boehm, B-O-E-H-M.

25 THE CLERK: Thank you.

1 THE COURT: Please wait a moment while we try to clear
2 up this technical problem.

3 MR. RAPHAEL: It says we're connected. Are you -- Is
4 there issues with the storm or something or your Internet
5 connection on your side?

6 TEXAS REPORTER: It says we're connected, but do you
7 want us to try and disconnect and reconnect again?

8 THE COURT: Please do so.

9 TEXAS REPORTER: Okay. We will.

10 THE COURT: The wonders of technology. Perhaps you
11 now can better understand why we had some delays earlier.

12 MR. RAPHAEL: Well, that and they're having a storm
13 down there. Can we block the screens for a second while I --

14 THE COURT: The jury screen is blocked.

15 MR. RAPHAEL: There they are. Hang on.

16 THE COURT: All right. Are we ready to proceed?

17 THE WITNESS: Yes.

18 THE COURT: Does the jury have an image?

19 (Yeses were heard from the jurors.)

20 MR. RAPHAEL: Okay.

21 THE COURT: Proceed.

22 D I R E C T E X A M I N A T I O N

23 BY MR. RAPHAEL:

24 Q All right. So, Mr. Boehm, I know you already stated your
25 full name, where do you work right now?

1 A I work for Paymentech, LLC.

2 Q Okay. And is that otherwise known as Chase Paymentech?

3 A Yes, sir.

4 Q All right. And you're located down where?

5 A In Dallas, Texas.

6 Q Okay. And that's the headquarters?

7 A Yes, sir.

8 Q And Chase Paymentech, do they have a web address?

9 A Yes, they do.

10 Q Is it ChasePaymentech.com?

11 A Yes, sir, it is.

12 Q Okay. Give me a brief background on Chase Paymentech and
13 what they do.

14 A Chase Paymentech is a merchant acquirer. Essentially, we
15 process transactions, both credit and debit transactions on
16 behalf of merchants; and we process those transactions through
17 the card associations, Visa and MasterCard; and then ultimately
18 fund the merchant for their transactions.

19 Q So the merchants are the people where we as consumers go
20 shopping with?

21 A I'm sorry, can you repeat that question?

22 Q I say the merchants, to put it in plain English, are the
23 businesses that consumers would go and buy things at or, in
24 this case hotels, that they would stay at?

25 A Yes. Correct.

1 Q Okay. And then the card associations that you mentioned,
2 Visa and MasterCard?

3 A Visa, MasterCard, yes.

4 Q And Discover, is that one, too?

5 A Discover, AmEx.

6 Q Okay. Any others?

7 A Those are the main card brands.

8 Q Okay. And so Paymentech does what on behalf of the
9 merchants like, for example, Sogro, Inc.?

10 MR. BORCIA: Objection, Judge.

11 THE COURT: One second. What's the objection?

12 MR. BORCIA: Scope, disclosure. This is supposed to
13 be a records custodian.

14 THE COURT: Overruled.

15 BY MR. RAPHAEL:

16 Q You can answer, sir.

17 A And can you restate the question?

18 Q Yeah. What is it -- What type of services is it that
19 Paymentech -- Chase Paymentech would do on behalf of merchants,
20 for example, like Sogro, Inc., in a general sense.

21 A In a general sense, we would have an agreement with a
22 merchant to process their transactions. They would accept
23 payments from consumers; and then through a terminal or PC
24 product or some avenue, they could transmit the information to
25 us, and then we would fund them, and we would provide

1 statementing to them.

2 Q "Statementing to them," is that what you just said?

3 A Statementing to the merchant.

4 Q Okay. And how long has Sogro, Inc. been a merchant
5 customer of Paymentech?

6 A Since 1999.

7 Q At Paymentech, what's your title there?

8 A Group executive for client --

9 Q Group executive for clients and --

10 A Group executive and client support and implementations.

11 Q Okay. So when you're talking client support, "clients"
12 would mean the merchants like Sogro?

13 A Correct.

14 Q And implementations means what in plain English for them?

15 A The on-boarding of merchant accounts.

16 Q Okay. All right. So I'm going to go through --

17 THE COURT: One second. What do you mean when you say
18 "on-boarding"?

19 THE WITNESS: On-boarding would be once a merchant
20 contacts a company like Chase Paymentech, we would receive a
21 merchant application; and we would go through the boarding
22 process.

23 So we would take that application, and we would build
24 the merchant records in order for us to be able to accept
25 payments and fund that particular merchant. We refer to that

1 as the on-boarding process.

2 THE COURT: Go ahead.

3 BY MR. RAPHAEL:

4 Q Okay. Is there anything else that's associated with the
5 on-boarding process besides what you just described?

6 A The only additional item would -- not only building the
7 back-end records for that; and then we would make sure that we
8 provided the connectivity parameters for that merchant to be
9 able to contact processor transactions to us.

10 Q All right. So I'm going to have you look at some documents
11 that you brought with you today.

12 And the first one I'm going to have you look at is
13 what's been numbered 2538 from tab 14 or Exhibit 14.

14 A Okay.

15 Q Okay. You have that in front of you?

16 A Yes, sir.

17 Q All right. So can you tell me what this document is?

18 A This document is a communication document that was used to
19 communicate to a specific group of merchants related to account
20 truncation.

21 Q Okay. Were you finished with your answer?

22 A Yes, sir.

23 Q Okay. And when you say "account truncation," what does
24 that mean?

25 A Account truncation on -- part over receipts. It's the

1 ability to view either the full cardholder number or a
2 truncated number.

3 Q So in plain English to only display the four digits of
4 cardholder's information on the receipt?

5 MR. BORCIA: Objection; leading.

6 THE COURT: Objection sustained. Ask another
7 question, please.

8 BY MR. RAPHAEL:

9 Q Could you please explain what you meant in more colloquial
10 jargon?

11 A So as a consumer, if I go to a retail or any type of
12 business and I get a customer receipt, on that receipt my
13 cardholder -- my full cardholder number should not be visible
14 nor should my expiration date.

15 Q Why?

16 MR. BORCIA: Objection; scope, relevance.

17 THE COURT: I will sustain the objection with regard
18 to scope. Quite frankly, I'm sustaining on the basis of
19 foundation.

20 MR. RAPHAEL: Okay.

21 BY MR. RAPHAEL:

22 Q All right. So this communication, document 2538, was sent
23 to a specific group of merchants that are clients of Paymentech
24 to communicate this information?

25 MR. BORCIA: Objection; leading.

1 THE COURT: Objection sustained.

2 MR. RAPHAEL: Okay.

3 BY MR. RAPHAEL:

4 Q I'm sorry. Repeat then what --

5 THE COURT: Ask a new question.

6 MR. RAPHAEL: Okay.

7 BY MR. RAPHAEL:

8 Q Document 2538, was this document created by Paymentech with
9 persons with knowledge of the information contained in the
10 document at or near the time the document was created?

11 A Yes.

12 Q Okay. Is it a regular practice of Paymentech to have a
13 person who knew about the information contained in the document
14 create these types of the documents?

15 A The experts would have been a part of the group create --
16 to help create the document; would not necessarily have been
17 the direct creator.

18 Q Okay. But the person with information would have created
19 the document?

20 A They would have been a part of the discussions.

21 Q Okay. So these documents are created by multiple people at
22 Paymentech?

23 A These documents would be created by a group of folks with
24 representation from our marketing group, our legal group, our
25 service teams, subject matter experts.

1 Q And so that would be a regular practice of Paymentech to
2 have that group of people who knew about their various
3 component items of information that are now contained in that
4 document create that document, correct?

5 A Correct.

6 Q Okay. And what was Paymentech's purpose for this
7 particular document, 2538?

8 MR. BORCIA: Objection; scope.

9 MR. RAPHAEL: It's a foundation question, Your Honor.

10 THE COURT: I'll give you latitude. Overruled. Go
11 ahead.

12 MR. RAPHAEL: Sorry.

13 BY MR. RAPHAEL:

14 Q What was Paymentech's purpose for the creation of this
15 document?

16 A The purpose of creating this document was to make sure we
17 communicated to our merchant base about the upcoming changes
18 with account truncation.

19 Q Okay. Previously, you said a specific group of merchants.
20 What did you mean by a specific group of merchants?

21 A For this particular communication, we identified merchants
22 that had terminal devices that appeared to be old in nature
23 that possibly were suspect of not account truncating the
24 cardholder number; and so this communication was specific to
25 those merchants that were identified.

1 Q Okay. And was Sogro, Inc. a merchant with such a device?

2 A I do not have knowledge of that.

3 Q If I gave you the type of device that was used by Sogro,
4 Inc., would you know if that was the category of merchant to
5 which --

6 MR. BORCIA: Objection; scope.

7 MR. RAPHAEL: -- this document would have been sent?

8 MR. BORCIA: Objection; scope. This goes far beyond
9 the affidavit.

10 THE COURT: Objection overruled. Again, I'm going to
11 give the -- this party latitude because it appears to be
12 foundational.

13 MR. BORCIA: I need an offer on this, Judge.

14 THE COURT: All right. Sidebar. Off the record. As
15 far as the witness is concerned, we'll be taking this at
16 sidebar. You'll hear a lot of scratchy noise.

17 (A sidebar was held.)

18 (The following proceedings were held at sidebar.)

19 THE COURT: One second.

20 MR. BORCIA: This is the very issue I addressed with
21 the Court earlier. This witness was not disclosed in discovery
22 or in the pretrial order. Your Honor has allowed the witness
23 to testify to the specific items in the affidavit presented by
24 the witness. In the affidavit of Mr. Wong, it states -- it
25 states -- it states that certain merchants were sent this

1 information. There was no indication from Mr. Wong that Sogro
2 was one of those merchants.

3 In fact, I examined Mr. Boehm before this testimony,
4 and he said he could not identify that. Now the Court is
5 allowing this counsel to go beyond the affidavit and basically
6 remedy a defect or something not in the affidavit, that is, to
7 tie up whether or not Sogro is one of the merchants not
8 contained in the affidavit.

9 This is not fair. It's surprising. It's not properly
10 disclosed, and it's not foundational. The foundation for this
11 goes to the issue of --

12 THE COURT: All right.

13 MR. RAPHAEL: Simply put, number one, I'm not trying
14 to do anything other than lay the foundation. These are direct
15 foundation questions out of a treatise as to what you ask to
16 establish foundation of the document.

17 I can't help that opposing counsel asked the questions
18 in the way that he asked them to pre-impeach the witness. If
19 you would have asked him the next remarkable question of what
20 group of merchants was this sent to, he would have discovered
21 that this was sent to that group of merchants.

22 It's not a surprise since it was an affidavit saying
23 that these are the documents that were transmitted in the
24 regular course of business to those merchants like Sogro.

25 MR. BORCIA: The issue I have, Judge --

1 THE COURT: I'm going to change my ruling. I'm going
2 to sustain the objection.

3 MR. RAPHAEL: I just need to understand, so I don't --

4 THE COURT: You asked a question of the witness
5 respecting whether or not Sogro, if --

6 You indicated that you were going to inquire whether
7 Sogro was one of the merchants who had a terminal that may be
8 problematic and thereby an attempt to lay a foundation for
9 something else. That was objected to. I made a ruling. I'm
10 reversing my ruling --

11 MR. RAPHAEL: Yes.

12 THE COURT: -- regarding the inquiries of Sogro's
13 terminal.

14 MR. RAPHAEL: But I can continue asking foundation for
15 the document?

16 THE COURT: You can continue examining the witness. I
17 don't know what else you want to do with respect to this
18 witness.

19 MR. RAPHAEL: Okay.

20 (The following proceedings were held in the presence
21 of the jurors.)

22 THE COURT: The Court has sustained the objection of
23 the defense, and another question will be asked of the witness.

24 Mr. Raphael, you have to move things along, please.

25 MR. RAPHAEL: Sorry, I was skipping some questions.

1 BY MR. RAPHAEL:

2 Q What was the method used by Paymentech to create and
3 maintain the document 2538?

4 A 2538 --

5 Q Uh-huh.

6 A -- is a document that is stored locally within a specific
7 project folder, and this project folder contained this
8 document.

9 Q Okay. And when you said that the purpose of the document
10 was to be sent to customer -- merchant customers of Paymentech
11 with older devices, how do you know that?

12 A I personally was part of the project team at that time.

13 Q Okay. And what would an older device have been defined as?

14 MR. BORCIA: Objection; scope.

15 THE COURT: Sustained.

16 BY MR. RAPHAEL:

17 Q In what manner could we identify how document 2538 was used
18 with regard to the Paymentech client base in the regular course
19 of its business?

20 A My apologies, can you restate --

21 THE COURT: Rephrase.

22 BY MR. RAPHAEL:

23 Q Okay. Was it -- It was the regular practice for Paymentech
24 to use the document 2538 to communicate the information in the
25 document with certain merchant clients of Paymentech, correct?

1 MR. BORCIA: Objection; leading.

2 THE COURT: Sustained.

3 BY MR. RAPHAEL:

4 Q What was the purpose, again, for the use of 2538?

5 MR. BORCIA: Objection; asked and answered.

6 THE COURT: Sustained.

7 BY MR. RAPHAEL:

8 Q Could you clarify how you determine -- how --

9 Could you clarify how this document was used in
10 communicating with Paymentech's merchant clients?

11 A In a general sense, we communicated to clients based on
12 terminal types that we believed possibly were not truncating
13 cardholder information or expiration dates.

14 Q And that was done in the regular course of regularly
15 conducted business activity by Paymentech?

16 A For this particular project, yes.

17 Q Okay. And what, for this particular project that this
18 particular document was used, what grouping of point-of-service
19 terminals was this document regularly used for in Paymentech's
20 business activity?

21 MR. BORCIA: Objection; scope, asked and answered.

22 THE COURT: Sustained with regard to scope.

23 MR. RAPHAEL: All right. Well, I would move to have
24 exhibit -- or document 2538 moved into evidence.

25 MR. BORCIA: Objection; relevance.

1 THE COURT: Overruled. It's received.

2 MR. RAPHAEL: Okay. I'm going to show members of the
3 jury the document. I'm sorry, I'm blocking out the witness's
4 face at the moment. I'll try and do some sort of a split
5 screen.

6 BY MR. RAPHAEL:

7 Q Okay. Now, looking at this document, can you go through
8 the information on it, please, and identify the items of
9 information that were intended to be communicated to Paymentech
10 merchant clients?

11 MR. BORCIA: Objection; scope.

12 THE COURT: Sustained.

13 MR. RAPHAEL: All right. I will let the document then
14 speak for itself.

15 THE COURT: No editorial comment is warranted. And,
16 again, members of the jury, the statements of the lawyers are
17 not evidence.

18 Ask another question of the witness, please.

19 BY MR. RAPHAEL:

20 Q When was this document created?

21 A March of 2004.

22 Q And was it the regular course of Paymentech's business to
23 transmit these documents to its merchant clients at that point
24 in time or shortly thereafter?

25 MR. BORCIA: Objection; asked and answered.

1 THE COURT: Sustained.

2 BY MR. RAPHAEL:

3 Q Okay. I'm going to move on to another document. I'd like
4 you to look at 2540, okay.

5 Do you recognize that document?

6 A Yes, I'm looking at that document.

7 Q Okay. And can you identify what that document is?

8 A It's very similar to the first exhibit with the exception
9 of not having a box around the bottom section.

10 Q Okay. And what was the purpose for Paymentech to create
11 this document?

12 A A general purpose would be the same as the first exhibit.

13 Q Okay. Are the answers that you gave with regard to the
14 first exhibit going to be the same as it relates to the second
15 exhibit?

16 A Yes, sir.

17 MR. RAPHAEL: Okay. I move to have the second exhibit
18 entered into evidence.

19 THE COURT: Any objection?

20 MR. BORCIA: Same objection.

21 THE COURT: Overruled. It's received.

22 BY MR. RAPHAEL:

23 Q I'm going to show the members of the jury document 2540.

24 And in terms of differences between 2540 and 2538,
25 could you again describe what you were stating previously now

1 that people can see it?

2 A The bottom section under action required, that is visible
3 and it is not outlined.

4 Q So you're -- If you're looking at it, then where it says
5 bold, action required if your terminal prints the full card
6 number and ending in four digits of cardholder number, no
7 action is necessary on your part, that's what you're referring
8 to?

9 A Yes, sir.

10 Q On the prior exhibit it's the same language, but it's got
11 some sort of gray box around it?

12 A That's correct.

13 Q Okay. Any other differences between the two documents?

14 A Generally, they're the same document.

15 Q And they were used for the same purpose?

16 A Correct.

17 Q All right. I'm going to have you look at document 2542.

18 Can you identify that document?

19 A This document is an industry wire.

20 Q Okay. And from -- And when was this document created?

21 A This document was created in September of 2004.

22 Q Okay. And was it Paymentech's regular practice to create
23 this document in its regularly conducted business activities?

24 A Yes, sir.

25 Q Okay. What was the purpose for this document that -- or

1 what was the --

2 What was the purpose for this document that Paymentech
3 created the document and used it in its regularly conducted
4 business activities for?

5 A The general purpose, again, was to create a document and
6 provide specific information related to compliance changes or
7 card brand changes.

8 Q Okay. And so was this document sent to its merchant
9 clients at or around the time that this document was created?

10 A Yes, sir.

11 Q Okay. And that was in September of 2004?

12 A Yes, sir.

13 Q Okay. Was it sent to all Paymentech client merchants or
14 certain client merchants?

15 A This document was created for the audience of all
16 merchants.

17 Q Okay. And how was it sent in the regular course of
18 regularly conducted activity by Paymentech?

19 A The general practice at that time was to send these
20 documents via e-mail or, I'm sorry, via regular mail.

21 Q So it was the regular practice of Paymentech at that point
22 back in September of 2004 to mail this type of document to all
23 Paymentech merchant clients?

24 A Correct.

25 MR. RAPHAEL: All right. And I move to have entered

1 into evidence document 2542.

2 MR. BORCIA: No objection.

3 THE COURT: Received.

4 MR. RAPHAEL: Okay. Hang on a second. We may have
5 these out of order. Could you block the -- Thank you. Sorry,
6 Your Honor, in my desire to create a more pristine version of
7 documents, I might have deleted this one from the group. Just
8 one second.

9 THE COURT: Use your hard copy.

10 MR. RAPHAEL: I won't be able to display it on the
11 screen. I've got it here.

12 THE COURT: With a hard copy you can use the Elmo with
13 the display device next to the window with the camera up in the
14 air or, alternatively, you can put it on the witness stand, and
15 we can show the picture from above the witness stand.

16 MR. RAPHAEL: That's fine, Your Honor. I actually
17 have it up now.

18 BY MR. RAPHAEL:

19 Q Okay. So if we unblock the screen, it's there. All right.

20 So at the top of 2542, that's the Paymentech industry
21 wire?

22 A Correct.

23 Q All right. First issue, volume one; and how many pages is
24 this document?

25 A Two pages.

1 Q Okay. And on your copy are you able to see the information
2 under summary of card company requirements?

3 A I am not.

4 Q Okay. Do you know what information was contained in there
5 in the originals?

6 A In a general sense. I mean, the heading states what the
7 general topic is, but I wouldn't have specific knowledge of
8 what's behind the grayed-in boxes.

9 Q Let's move to the second page of the document which is
10 2543. What are the headings there?

11 A I'm sorry, what was the question?

12 Q Can you see the headings on that?

13 A I can.

14 Q All right. So the second -- The middle heading is account
15 number truncation suppression requirement nears?

16 A Correct.

17 Q Okay. And what did that have to do with?

18 A Again, account truncation and the need to get in front --
19 get information in front of our clients.

20 Q Blowing it up here. Okay.

21 So this -- This information here would have been out
22 in advance of the actual compliance statement?

23 A Correct.

24 Q Okay. I want to move to document 2548, and can you
25 identify that document for me?

1 A 2548 --

2 Q Yeah.

3 A -- is a specific targeted communication.

4 Q Okay. What do you mean "a specific targeted
5 communication"?

6 A Meaning, the intent was for a specific merchant that was
7 part of a proactive call-out campaign related to account
8 truncation.

9 Q Okay. And what was -- What was the purpose of this
10 document in the account call-out campaign you're discussing?

11 A For situations where three attempts had been tried in order
12 to reach the merchant. The letter was created so that you can
13 follow-up via mail with the same information that was -- that
14 they were calling about.

15 Q Okay. And so what -- What does this version of that
16 document represent in terms of Paymentech's document?

17 MR. BORCIA: I don't understand the question, Judge.

18 THE COURT: Did you understand the question as asked?

19 THE WITNESS: No, I did not.

20 MR. RAPHAEL: Okay.

21 BY MR. RAPHAEL:

22 Q Let me see here. What was the purpose behind creating this
23 particular document, 2548?

24 A This document was created specifically for a service team
25 that conducted the outbound call campaign related to account

1 truncation.

2 Q Okay. What does this document have to do with the
3 Paymentech merchant client of Sogro, Inc.?

4 A This document is not tied to Sogro.

5 Q When you say -- It's not tied to Sogro?

6 A It's not directly associated with Sogro.

7 Q Well, it's a template; so it wouldn't be directly tied with
8 anyone.

9 THE COURT: One second. Counsel, you cannot testify.

10 MR. RAPHAEL: Okay.

11 THE COURT: Rephrase.

12 BY MR. RAPHAEL:

13 Q This is a template, correct?

14 A That is correct.

15 Q It's not directly tied to any particular --

16 THE COURT: Is it --

17 BY MR. RAPHAEL:

18 Q I'm sorry. Is this document tied to any particular
19 merchant client?

20 A This particular document is a template. It is not tied to
21 any specific merchants.

22 Q Okay. Then how does it tie to merchants in the use of this
23 document in its ordinary and regularly conducted business
24 activities of Paymentech?

25 THE COURT: Rephrase, please.

1 BY MR. RAPHAEL:

2 Q Yeah. How does this template --

3 How does this template get used in Paymentech's
4 regular --

5 THE COURT: Sidebar, please.

6 (A sidebar was held off the record.)

7 (The following proceedings were held in the presence
8 of the jurors.)

9 THE COURT: Please be advised that we're going to take
10 a very short break. I'd like the witness to stand by. We will
11 keep the line open. And if you can mute your mic, that would
12 certainly be helpful; but the jury is going to go back to the
13 jury room for a couple of moments. And we'll resume as quickly
14 as we can.

15 (A recess was taken from 2:38 p.m. to 2:51 p.m.)

16 (The following proceedings were held in the presence
17 of the jurors.)

18 THE COURT: Plaintiff may proceed.

19 MS. KRUMHORN: Mr. Boehm, I'm Allison Krumhorn. I'm
20 going to be finishing up your testimony.

21 D I R E C T E X A M I N A T I O N (continued)

22 BY MS. KRUMHORN:

23 Q So could I take you back to page 2548.

24 A Yes, ma'am.

25 Q Okay. What group of merchants did Paymentech send this to

1 in its regularly conducted business activity?

2 A This letter was a follow-up to merchants that were part of
3 the proactive call campaign related to account truncation.

4 Q Could you please describe that group.

5 MR. BORCIA: Objection to scope.

6 THE COURT: Overruled.

7 THE WITNESS: Can you restate question, please?

8 BY MS. KRUMHORN:

9 Q Yes. Which -- What group?

10 A Group of merchants?

11 Q Yes.

12 A Merchants that, again, were target -- or identified as
13 potentially having terminals that possibly were not truncating
14 the full cardholder number would have been part of that
15 outbound call campaign.

16 Q Describe the group of merchants that this was used to
17 describe the identity.

18 MR. BORCIA: Objection; scope.

19 THE COURT: Do you understand the question?

20 THE WITNESS: I believe the question to be a repeat --

21 THE COURT: Okay. If you understand -- Do you
22 understand what was asked?

23 THE WITNESS: Yes.

24 THE COURT: All right. Before you respond, the
25 objection is overruled. Proceed.

1 MR. BORCIA: And objection; asked and answered.

2 THE COURT: Overruled. You may respond to the
3 question if you can recall it.

4 THE WITNESS: It would be better to have the question
5 restated.

6 THE COURT: All right. I thought so. Go ahead.

7 BY MS. KRUMHORN:

8 Q Please describe the criteria used to identify the group.

9 A The merchants that were identified as having a piece of
10 equipment likely to not truncate cardholder information would
11 have been identified for this outbound call campaign.

12 Q Which equipment are you referring to?

13 MR. BORCIA: Objection; scope.

14 THE COURT: Overruled.

15 THE WITNESS: I do not have that information.

16 BY MS. KRUMHORN:

17 A Okay. Was it the regular practice and regular course of
18 business for Paymentech to transmit copies of these
19 documents --

20 Was it the regular practice and regular course of
21 business of Paymentech to transmit copies of these documents to
22 Paymentech merchant customers like Sogro?

23 MR. BORCIA: Objection; leading.

24 THE COURT: Overruled.

25 MS. KRUMHORN: I would like to --

1 THE COURT: There was no response to the question.

2 BY MS. KRUMHORN:

3 THE COURT: Did you understand the question as asked?

4 THE WITNESS: Yes, I understood the question.

5 THE COURT: Can you respond to the question?

6 THE WITNESS: For this particular project, an outbound
7 call campaign, the intent was to communicate this letter to
8 merchants after three call attempts had been attempted.

9 MS. KRUMHORN: I would ask now to move this document
10 into evidence, document 2548.

11 MR. BORCIA: Objection; relevance.

12 THE COURT: Overruled.

13 BY MS. KRUMHORN:

14 Q Next, please look at document 2550.

15 A I have 2550.

16 Q Okay. What is this document?

17 A This document is a part of our website talking about
18 account number truncation rules.

19 Q And when was this created?

20 A On or before April of 2008.

21 Q Is it the regular practice of Paymentech to create and
22 maintain documents like this?

23 A Yes.

24 Q Is this document routinely created by persons --

25 Is this document routinely created by persons with

1 knowledge of the information contained in the document at or
2 near the time the document was created?

3 A Yes.

4 Q And what was the purpose of this document?

5 A The purpose of having information on our website is to make
6 sure we have consistent messaging with -- communicating to our
7 clients as well as what is on our website.

8 Q Was it the regular course of business for Paymentech to
9 transmit copies of these -- to have this on the website?

10 A Yes.

11 MS. KRUMHORN: I would like to move document 2550 into
12 evidence.

13 MR. BORCIA: Objection; relevance.

14 THE COURT: Overruled. Received.

15 BY MS. KRUMHORN:

16 Q The next document I would like you to look at, please, is
17 2552.

18 A I have 2552.

19 Q What is this document?

20 A This document is a -- frequently asked questions related to
21 account truncation.

22 Q Is it the regular practice of Paymentech to create and
23 maintain a document like this?

24 A Yes.

25 Q Are these documents routinely created by persons with

1 knowledge of information contained in the documents at
2 or near --

3 THE COURT: Are you asking about these documents or
4 this particular document?

5 MS. KRUMHORN: This particular document. Document --
6 To be specific 2552 -- 2552 which then goes to 2553, one line.

7 THE WITNESS: Can you restate the question, please?

8 BY MS. KRUMHORN:

9 Q Is this document routinely created by persons with
10 knowledge of the information contained in the document at or
11 near the time the document was created?

12 A Yes.

13 Q When was this document created?

14 A This document is from our website.

15 Q Uh-huh.

16 A And dates back to 2008.

17 Q How long was it --

18 THE COURT: Repeat your answer.

19 THE WITNESS: This document is related to a web page,
20 and the way this record was -- dates back to 2008.

21 BY MS. KRUMHORN:

22 Q What was the earliest record?

23 A I do not have that information.

24 Q What was the web address for this record?

25 A Paymentech.com.

1 Q What was purpose of this document -- website?

2 A This document, in addition to the last exhibit we reviewed,
3 was to help provide answers to frequently asked questions
4 relating to account truncation.

5 Q Was it the regular practice for Paymentech to transmit
6 copies -- to post these on the website?

7 A To post these on the website, correct.

8 MS. KRUMHORN: I move now to -- I would like to move
9 documents 2552 and 2553 into evidence.

10 MR. BORCIA: Objection; relevance.

11 THE COURT: Objection overruled. It's received. I
12 should say both are received.

13 BY MS. KRUMHORN:

14 Q Okay. The next document is 2555 going to 2556.

15 A I have 2555 and 2556.

16 Q What is this document?

17 A This document is an earlier version of Exhibit 6.

18 Q Okay. Is the regular practice of Paymentech to create and
19 maintain a document of this type?

20 THE COURT: Are you asking by "a document of this
21 type" or this particular document?

22 MS. KRUMHORN: This particular document. I apologize,
23 Your Honor.

24 THE WITNESS: Yes.

25 BY MS. KRUMHORN:

1 Q Okay. Is this document routinely created by persons with
2 knowledge of the information contained in the document at or
3 near at the time it was created?

4 A Yes.

5 Q What was Paymentech's purpose for these documents -- for
6 this document?

7 A The general purpose was to make sure we were communicating
8 to our clients the impact of upcoming changes for this one
9 specific -- to account number truncation rules.

10 Q So I'm looking -- If you go to 25 -- At the bottom of 2555
11 and the bottom of 2556 --

12 A Yes.

13 Q -- it just lists all the states that you -- that you had
14 said that are Paymentech representatives as having some sort of
15 truncation requirements.

16 A Correct.

17 Q Okay. And what was the purpose of this document other than
18 what I just stated?

19 A Just the awareness.

20 Q Okay. Okay. Was it the regular practice of Paymentech to
21 transmit -- to post these on their website?

22 Was it the regular practice of Paymentech to post this
23 document on the website?

24 THE COURT: Would you respond again, please.

25 THE WITNESS: Yes.

1 MS. KRUMHORN: I now request that we move document
2 2555 and 2556 into evidence.

3 MR. BORCIA: No objection.

4 THE COURT: Received.

5 BY MS. KRUMHORN:

6 Q So I'm going to take you to the bottom, again, of 2555 and
7 the top of 2556.

8 A Yes, ma'am.

9 Q You have a listing of all the states?

10 A The states -- The list of states is complete as of this
11 particular posting on the website.

12 Q Okay. And according to the document, again, why are these
13 states listed here?

14 A Each state could have different rules or different dates of
15 compliance.

16 Q Okay. Okay. Did each state -- These states, these are all
17 links; and so it would take them to where -- to the applicable
18 law if I'm correct?

19 A Correct.

20 Q Okay. And is Wisconsin listed?

21 A Yes, it is.

22 Q Okay. Where is Wisconsin listed?

23 A On document 002556.

24 Q Okay. Okay. I'm going to -- Please look at documents 2552
25 and 2553.

1 A Okay.

2 Q Please identify the document you brought -- Please identify
3 what this is.

4 A On 2552?

5 Q Yeah, 2552, 2553.

6 A Again, this is the frequently asked questions related to
7 account truncation posted on our website.

8 Q And when was this created?

9 MR. BORCIA: Judge, we've been through this. This is
10 already in evidence.

11 MR. RAPHAEL: No, that's the second document. This
12 is --

13 MS. KRUMHORN: This is a different one.

14 MR. BORCIA: He's been through 2552 and 2553. It's in
15 evidence.

16 MR. RAPHAEL: Oh, I'm sorry.

17 MS. KRUMHORN: Okay.

18 THE COURT: Yes.

19 BY MS. KRUMHORN:

20 Q 2558, 2559, 2660 -- or 2560 and 2561.

21 A I have those documents.

22 Q Okay. What is this document?

23 A This document is a text version of an earlier version of
24 the last exhibit.

25 Q Okay. So this was on the website?

1 A This is the text version of an earlier version of Exhibit
2 8.

3 Q Okay. Is it the regular practice of Paymentech to create
4 and maintain a document of this type?

5 A Yes.

6 Q Okay.

7 THE COURT: Let's clarify something. The witness just
8 referred to Exhibit 8. Is Exhibit 8 a subpart of Exhibit 14
9 that you're looking at?

10 MR. RAPHAEL: Yes.

11 THE COURT: I'm asking the witness.

12 MR. RAPHAEL: I'm sorry.

13 THE COURT: Is Exhibit 8 a subpart of the overall
14 exhibit that you have in front of you?

15 THE WITNESS: Yes.

16 THE COURT: All right. Go ahead.

17 BY MS. KRUMHORN:

18 Q It is the regular practice of Paymentech to create and
19 maintain a document like this?

20 A Yes.

21 Q Is this document routinely created by persons with
22 knowledge of information contained in the document at or near
23 the time the document is created?

24 A Yes.

25 MS. KRUMHORN: I would now ask to move documents 2558

1 and 2559 through 2560, 2561 into evidence.

2 THE COURT: Any objection?

3 MR. BORCIA: None.

4 THE COURT: They're received.

5 BY MS. KRUMHORN:

6 Q Okay. I'm now -- If you can, I guess, also put document
7 2555 and 2556 next to you, as well.

8 A Okay.

9 Q What are the differences between these documents?

10 MR. RAPHAEL: One minute, Your Honor. I'm going to
11 split screen it.

12 THE COURT: One moment, please.

13 BY MS. KRUMHORN:

14 Q What are the differences between these two documents?

15 A These documents -- Exhibit 9 is the text version. Exhibit
16 8 is a different version. It's specifically what was posted.
17 They're similar but would call out -- as updates --

18 As updates were needed, then updates would have been
19 made, right.

20 Q Which one was the earlier version?

21 A Exhibit 9 is an earlier version of Exhibit 8.

22 THE COURT: Would you please state the page number of
23 Exhibit 9 that you're referring to.

24 THE WITNESS: 2558 through 2561 is a text version of
25 an earlier version of Exhibit 8. Page number 00255 (sic) and

1 2556.

2 BY MS. KRUMHORN:

3 Q Okay. I now ask that you look at documents 2563 and 2564.

4 A Okay, I have these documents.

5 Q Please identify this document.

6 A Within our website there's a merchant support center
7 outlining different topics of interest that our merchants might
8 want to have more information specifically calling out account
9 truncation, among other topics.

10 Q Is it the regular practice of Paymentech to create and
11 maintain this type of page?

12 A Correct.

13 Q And what was the purpose for this web page?

14 A General awareness about multiple topics.

15 Q What topics?

16 A Multiple topics.

17 Q Was it the regular practice in the course of business for
18 Paymentech to post these on their website?

19 A Yes.

20 MS. KRUMHORN: I now ask to move documents 2563 and
21 2564 into evidence.

22 THE COURT: Objection?

23 MR. BORCIA: No objection, Judge.

24 THE COURT: 2563 and 2564 are received.

25 BY MS. KRUMHORN:

1 Q Okay. In the portion of the web page that says card
2 association alerts; and then there's, you know, various things
3 listed underneath, are those links?

4 A Can you state the documents you're referring to?

5 Q Yes, I'm sorry, 2563 in the middle of the page.

6 A Under card association alerts?

7 Q Yes.

8 A Those would be quick links to specific information.

9 Q Okay. And then if you go a little down the page, there is
10 a heading that says account truncation.

11 A Yes.

12 Q And below that are those links?

13 A Yes.

14 Q And do you know what those are links to?

15 A I do not have that information.

16 MS. KRUMHORN: Okay. I have no further questions.

17 THE COURT: Mr. Borgia.

18 MR. BORCIA: Thank you, Judge. Can we have the screen
19 transferred to me?

20 C R O S S - E X A M I N A T I O N

21 BY MR. BORCIA:

22 Q Good afternoon, sir.

23 A Good afternoon.

24 Q I have some follow-up questions for you, Mr. Boehm.

25 When was the first time you ever heard of Sogro?

1 A In this particular case; not before.

2 Q And when you say "in this particular case," give us some
3 time frame for that.

4 A Within the last two weeks.

5 Q Before the last two weeks, you had never heard of Sogro?

6 A I have not.

7 Q Now, I'm going to go through some follow-up questions on
8 the exhibits that counsel asked you about, and I apologize if
9 some of this is going over things you've already gone over
10 somewhat. I'll try to keep it brief.

11 If we can turn back to Exhibit 2538.

12 A I have 2538.

13 MR. BORCIA: Judge, if we can have the screen moved to
14 my left so I can show the jury.

15 THE COURT: I'm not certain that can be done.

16 MR. RAPHAEL: I'm moving to 2538 for you.

17 MR. BORCIA: All right. Can you move it up a little
18 bit?

19 MR. RAPHAEL: Like this?

20 MR. BORCIA: Yeah, that's fine.

21 BY MR. BORCIA:

22 Q So counsel asked you some questions about this document.

23 Do you recall those questions?

24 A I mean, generally, yes.

25 Q So the first question I have is, is this a Paymentech

1 document?

2 A It is.

3 Q And does it have the name Paymentech on it?

4 A I do not see Paymentech here.

5 Q So, in fact, the word Paymentech is not on the document?

6 A Correct.

7 Q Now, you have no knowledge to state that this document was
8 ever sent to Sogro, correct?

9 A Correct.

10 Q Going to Exhibit 2540, I'll ask you again, on this document
11 you have no basis to say that this document, 2540, was ever
12 sent to Sogro?

13 A Correct.

14 MR. BORCIA: Can we move 2540 up next.

15 MR. RAPHAEL: I'm sorry.

16 BY MR. BORCIA:

17 Q Now, going to document 2542 that counsel -- Are you there?

18 A I'm here.

19 Q Okay.

20 MR. RAPHAEL: Wait.

21 BY MR. BORCIA:

22 Q Now, the first question I have is, this document itself,
23 when was it created?

24 A This document was created in September of 2004.

25 Q Okay. And was that after the FACTA statute was passed?

1 A I do not have that date in front of me.

2 Q Is there any reference to FACTA in this document?

3 A In my copy I do not have the full contents of this
4 document.

5 Q Well, in the content that you do have, is there any
6 reference of FACTA?

7 A I do not see reference to that.

8 Q Let's go to page two of this document.

9 MR. RAPHAEL: Specifically, Counsel, 25 --

10 MR. BORCIA: 2543.

11 BY MR. BORCIA:

12 Q There's a reference if you go under the -- If you can blow
13 that up -- Under account number truncation suppression
14 requirements, do you see that?

15 A I do see that.

16 Q That's talking about the nearing requirements for Visa and
17 MasterCard, correct?

18 A Correct.

19 Q It doesn't talk about the nearing requirements for FACTA,
20 does it?

21 A I do not see that information in there.

22 Q In fact, the next paragraph talks about and states, it's
23 easy to determine if your terminals and devices are compliant.

24 If they are, only the last four digits of the
25 cardholder's account number will print. Do you see that?

1 A Yes.

2 Q Okay. Now, the requirement of the last four digits, that's
3 not a FACTA requirement, is it?

4 MR. RAPHAEL: Objection; form and foundation.

5 THE COURT: I'll sustain the foundation question.

6 BY MR. BORCIA:

7 Q Are you aware of what FACTA's requirements are?

8 A I am not.

9 Q So you're not aware of what FACTA required in terms of
10 credit card receipts?

11 A No, sir.

12 Q When did you begin working for Paymentech?

13 A In 1994.

14 Q Now, going back to Exhibit 2542, again, I'll ask you this
15 question with respect to this document, you have no basis to
16 state that this document was ever sent to Sogro?

17 A Correct.

18 Q Let's go to document 2548.

19 MR. BORCIA: Would you put that on the screen, please.

20 MR. RAPHAEL: It's five --

21 BY MR. BORCIA:

22 Q Are you there, sir?

23 A Yes.

24 Q Now, I think you said earlier that this document was a
25 template?

1 A Correct.

2 Q And I think you also told counsel that this document was
3 not tied to Sogro.

4 A This document was not tied to any merchant specifically.

5 Q Okay. Including Sogro?

6 A Including Sogro.

7 Q And I'll ask you about this document. You have no basis to
8 state that this document was ever sent to Sogro?

9 A Correct.

10 Q When I say "this document," I just don't mean the template.
11 I mean, you have no basis to say the actual document if the
12 address had been filled in was ever sent to Sogro, correct?

13 A That's correct.

14 Q Now, there's reference here to -- in this document to phone
15 calls being made on August 15, 2004; August 20, 2004; and
16 August 25, 2004. Do you see that?

17 A I do.

18 Q Now, that is just documents or phone calls listed in the
19 template, correct?

20 A Correct.

21 Q And you have no basis to state that Sogro was ever called
22 by Paymentech, correct?

23 A Correct.

24 Q Let's go to 2550. Now, you made a statement, as counsel
25 asked you in this document --

1 MR. BORCIA: If we can get to that, Counsel. Do you
2 have 2550?

3 BY MR. BORCIA:

4 Q Counsel asked you the question of when this document was
5 created. Do you recall that?

6 A I do.

7 Q And -- Bless you. I thought you said April of 2008 or
8 before. Maybe I misunderstood your testimony.

9 Do you recall what date it was created?

10 A I said on or before April of 2008.

11 Q Now, the copyright symbol listing in this document says
12 2010. Do you see that?

13 A That's correct.

14 Q All right. So it's possible this document was not created
15 before April 2008?

16 A This document was printed in 2010.

17 Q Correct. And my question is, in terms of when the document
18 was first -- wait. When I say a document here, this is a
19 printout of a website?

20 A Correct.

21 Q Okay. So can we call it just a web printout?

22 A Correct.

23 Q Okay. So the web printout -- You said it was printed in
24 2010. I think your testimony is, it would have been created
25 sometime on or before April of 2008, correct?

1 A That's correct.

2 Q Now, you have no records to show that it was actually
3 created before April of 2008, correct?

4 A There's evidence on archive.org that shows this particular
5 information out there or very similar information as of April
6 of 2008.

7 Q And there's no information that you've seen on archive.org
8 or anywhere else that would have shown this information or
9 information like it before April of 2008?

10 A No, sir.

11 Q Correct?

12 A Correct.

13 Q Now, if we can go to Exhibit 2552 and '3. Would you give
14 the same answers in terms of the dates of this document as the
15 prior document?

16 A Yes, sir.

17 Q Again, this document is talking about truncation
18 requirements of the credit card companies?

19 A Correct. Although, on 2550 there's reference to FACTA.

20 Q On 2550, okay. All right. Let's go back to that for a
21 second.

22 2550, it doesn't state on there what FACTA required,
23 correct?

24 A Correct.

25 Q Let's go forward. And counsel asked you some questions

1 about --

2 MR. RAPHAEL: Wait, are we talking about -- Were you
3 just asking him about --

4 THE COURT: One second. One second, Counsel. Please
5 do not interrupt and ask a question of opposing counsel.

6 If you have something you want to raise, address it to
7 the bench.

8 MR. RAPHAEL: Your Honor, I object to that last
9 question and answer as incorrect to both of them.

10 THE COURT: Well, at this time your associate is the
11 one who's handling the witness. If she wishes to raise an
12 objection, I'll listen to it.

13 BY MR. BORCIA:

14 Q Now, counsel asked you some questions about --

15 THE COURT: He's withdrawing the question. Ask
16 another question, please.

17 MR. BORCIA: I am.

18 BY MR. BORCIA:

19 Q 2558 through 2564 --

20 A Yes, sir.

21 Q I want to make sure I understand -- I'm not a techno guy --
22 I think you said this was a text version of what was previously
23 in Exhibit No. 8.

24 A It's a text version of an earlier version of Exhibit 8
25 specifically is how it was stated on the affidavit.

1 Q Now, Exhibit 8, if you go back to that, that was a web
2 printout, correct?

3 MR. RAPHAEL: Am I going --

4 MR. BORCIA: Exhibit 8, 2555.

5 MR. RAPHAEL: Okay.

6 THE WITNESS: That's correct.

7 BY MR. BORCIA:

8 Q So what you're saying is, 2558 is a text version of a web
9 page?

10 A It's a text version of a web page earlier than Exhibit 8.

11 Q Okay. If we can go to 2558, Counsel. All right.

12 So now when you say it's a text version of an earlier
13 version, do you know when this document was created?

14 A I do not.

15 Q Is there any indication on the document that would refresh
16 your memory in terms of when it could have been created?

17 A No, sir.

18 Q Well, let's go to the first page. There's a statement that
19 says under the paragraph, in addition -- looks like it's the
20 second full paragraph under the heading -- In addition, Visa
21 and MasterCard have also set deadlines for compliance among
22 businesses.

23 Visa requires that all terminals deployed after
24 June -- July 1st, 2003 be in compliance by July 1st, 2003. Do
25 you see that indication?

1 A Yes, sir.

2 Q Okay. So now this document, again, is talking about what
3 the credit card companies are requiring, Visa and MasterCard,
4 correct?

5 A Correct.

6 Q And it's also talking about what the states are requiring
7 in terms of truncation?

8 A Yes.

9 Q Okay. Now, in this document, you actually specify -- and
10 this would have been, again, on the website, correct, at some
11 point in time?

12 A The content, yes.

13 Q Now, you specify for your member -- By the way, let me ask
14 this question first.

15 The website itself, was that accessible to the public?

16 A Yes, sir.

17 Q So you do not have to be a member to access the website?

18 A Correct.

19 Q Then you have listed here -- On the website you listed all
20 the states that had legislation passed requiring truncation?

21 MR. RAPHAEL: Objection; foundation.

22 THE COURT: Overruled.

23 BY MR. BORCIA:

24 Q Is that correct, sir?

25 A The state -- The information that was available at the time

1 that this text was created would have been current.

2 Q What you specify is two different dates for each state,
3 correct?

4 A Correct.

5 Q You specified -- Can you tell the jury what those dates
6 were, the two dates under each state? Starting with the first
7 date. Why don't you start under Arkansas.

8 A Right. So the date is 2003. It's talking about the year
9 referencing the information about state, year, bill, number,
10 new terminal deadline, and existing terminal deadline.

11 Q Okay. So if we -- Maybe Arkansas is a bad example. Let's
12 go to Arizona. It's got two different dates. It's got June 1,
13 2002 and January 1, 2004. What do those two dates mean?

14 A Terminal deadline of June 1, 2002 and existing terminal
15 deadline of January 1, 2004.

16 Q I didn't understand. The first one you said -- I didn't
17 catch your answer. I'm sorry.

18 A In reference to June 1st?

19 Q Yes. Sorry.

20 A That's new terminal deadline.

21 Q What does that mean, "new terminal deadline"?

22 A This would reference new terminals being deployed.

23 Q So if I'm buying a new terminal or getting a new terminal
24 for Paymentech, that's the deal I've got to comply with,
25 June 1st, 2002?

1 A Correct.

2 Q And the second date is you said existing terminal deadline?

3 A Correct.

4 Q So if I already have a Paymentech terminal, that's when I
5 have to comply, January 1st, 2004?

6 A Correct.

7 Q Now, is it fair to say that this document would have been
8 created on or after the dates of the legislation referenced
9 here?

10 MR. RAPHAEL: Objection; form, foundation.

11 THE COURT: Objection sustained.

12 BY MR. BORCIA:

13 Q Well, let me ask you this, sir.

14 Please tell this jury in this document where there's
15 any reference to the state of Wisconsin having requirements for
16 truncation.

17 A I do not see reference to Wisconsin.

18 Q Let's go to page 2561. And if you -- If Wisconsin were on
19 there, you would expect to see it on that page after the state
20 of Washington, correct?

21 A Correct.

22 MR. BORCIA: That's all I have. Thank you.

23 THE COURT: Is there any redirect?

24 MS. KRUMHORN: Yes.

25 R E D I R E C T E X A M I N A T I O N

1 BY MS. KRUMHORN:

2 Q If you could look at documents 2538 and 2540.

3 THE COURT: Would you please move the documents to the
4 side or pull it down.

5 MR. RAPHAEL: Can we take a two-minute pause, Your
6 Honor?

7 THE COURT: What's the reason?

8 MR. RAPHAEL: I just want to convey my notes.

9 THE COURT: Proceed.

10 MR. RAPHAEL: Okay.

11 BY MS. KRUMHORN:

12 Q You had testified that these documents were sent to a
13 specific group of merchants that would likely not be compliant
14 with FACTA, documents 2538 and 2540?

15 A I testified that merchants that were not -- did not have
16 cardholder account truncation would have been targeted for this
17 communication.

18 Q Okay. And you don't know -- You can't say that Sogro was
19 not sent these documents, correct?

20 A No, I cannot.

21 Q Okay. Did you look at Paymentech business records for
22 Sogro before appearing today?

23 A Only briefly during a screen share with the customer
24 service manager.

25 Q Okay. Would they have fit in the criteria of the merchants

1 that were sent documents 2538 and 2540?

2 MR. BORCIA: Objection; scope.

3 THE COURT: Sustained.

4 BY MS. KRUMHORN:

5 Q When you looked at their file, what information did you
6 see, the Sogro file?

7 A It was general information just to confirm their merchant
8 number.

9 Q Okay. Could you tell by looking at the merchant number
10 whether they were sent these documents, documents 2538 and
11 documents 2540?

12 A No, I could not.

13 Q Okay.

14 MS. KRUMHORN: That's -- I have no further questions.

15 MR. BORCIA: No further, Judge. Thank you.

16 THE COURT: Does the jury have questions of the
17 witness? Please stand by. Please approach.

18 (A sidebar was held.)

19 (The following proceedings were held at sidebar.)

20 THE COURT: The attorneys are looking at the jury's
21 questions at this time.

22 Do the plaintiffs have objections to any one or more
23 of the questions? Does the plaintiff have objections to any
24 one or more of the questions?

25 MS. KRUMHORN: No, Your Honor.

1 THE COURT: Does the defense?

2 MR. BORCIA: Yes. These questions are outside of the
3 scope of the affidavit. They go into areas such as how was it
4 even delivered to the merchant, what type of equipment --
5 what's the history of the models. This goes beyond whatever
6 the affidavit says; beyond the scope and beyond the affidavit.

7 MR. RAPHAEL: Respectfully, Your Honor, defense
8 counsel opened up the doors on almost all of this when he
9 started asking the witness about his knowledge.

10 THE COURT: Ms. Krumhorn should be raising these
11 issues.

12 MS. KRUMHORN: Mr. Borcia opened the door to all these
13 issues by asking the witness knew what FACTA was. And all of
14 this -- He went outside the scope of the documents to asking
15 his personal knowledge regarding matters.

16 THE COURT: But it doesn't -- I'm not clear as to
17 whether or not the witness was asked anything concerning, for
18 example, the delivery of 2548 to the merchant.

19 MR. BORCIA: It's outside Mr. Wong's affidavit.

20 THE COURT: I'm going to sustain the defense
21 objections.

22 (The following proceedings were held in the presence
23 of the jurors.)

24 THE COURT: Members of the jury, the Court has
25 concluded these questions will not be asked. The witness is

1 therefore excused.

2 Thank you very much for your time this afternoon.

3 THE WITNESS: All right. Thank you.

4 THE COURT: That will terminate the connection.

5 Who will be the next witness?

6 MS. KRUMHORN: Trisha Pugal.

7 (The witness was first duly sworn under oath.)

8 THE CLERK: Please state your full name for the record
9 and spell your last name.

10 THE WITNESS: Trisha Pugal. Last name is spelled P as
11 in Peter, U-G-A-L.

12 THE CLERK: Thank you.

13 MR. RAPHAEL: Sorry, Your Honor, we're just switching
14 gears on the exhibits.

15 D I R E C T E X A M I N A T I O N

16 BY MR. RAPHAEL:

17 Q Good afternoon. Your name is Trisha Pugal?

18 A Pugal.

19 Q Pugal. I'm sorry if I mispronounced it before.

20 Can you tell me where you work?

21 A Sure. I work at the Wisconsin Hotel and Lodging
22 Association, formally the Wisconsin Innkeepers Association.

23 Q What is that organization?

24 A Representing the lodging industry around the state, over
25 700 members, property members.

1 Q Okay. And what's the purpose behind the association?

2 A Marketing, education, government representation, resources,
3 legal assistance, et cetera.

4 Q Okay. When you say "education," what type of education do
5 you provide members with?

6 A A variety of information that comes out that relates to the
7 industry timely and, in general, for operations, to planning,
8 to general business practices.

9 Q Would those general business practices include accepting
10 credit cards for payment for lodging?

11 A As it relates to lodging properties, sure.

12 Q Okay. And you also said part of the organization also
13 consists -- it provides legal representation of some sort?

14 A Yes. They have access to our counsel for specific
15 situations.

16 Q Okay. And is that access free or at charge or what?

17 A It is free with limitations.

18 Q Okay. So members are able to consult with these lawyers on
19 an as-needed basis for questions?

20 A Limited situations.

21 Q Okay. And give me a for instance of what kind of limited
22 situations we're talking about.

23 A I'm talking primarily frequency or if you need something in
24 writing, et cetera. It's more consult.

25 Q Uh-huh. Okay. So nothing that would involve, you know,

1 serious litigation; but you could go to them to ask procedural
2 or legal questions?

3 A Basic questions, correct.

4 Q All right. And then as part of the education aspect of the
5 association, do you guys put out a -- I guess I'd call it a
6 newspaper or magazine called In Touch?

7 A Yes.

8 Q And what is that? Describe it for me.

9 A It's a quarterly publication just for members; and it has
10 different news, some articles, association information, et
11 cetera.

12 Q Okay. And is that mailed to all of your membership?

13 A It is mailed to -- Yes, I believe we have some different
14 kinds of members that are not included in that mailing list;
15 but all of our lodging members do get a copy.

16 Q Would Sogro, Inc. be one of the lodging members that was
17 with the group?

18 A At what time?

19 Q I'm sorry, between 2004 and 2008.

20 A Yes.

21 Q Okay. So they've ceased becoming -- They've ceased being a
22 member?

23 A The property is the member, and -- The lodging property
24 itself is the member not the individual.

25 Q Oh, okay.

1 A So the property was no longer a member after 2010.

2 Q Okay. Prior to that, how far back were they a member?

3 A I believe it was 1973 or 1978.

4 Q Okay.

5 A It was a long time.

6 Q All right. So they would have received and be sent these
7 In Touch quarterly -- What do you call them? Magazines?

8 A A magazine.

9 Q The quarterly In Touch magazine would have been sent to
10 them?

11 A It would have been mailed to them, correct.

12 Q How long had In Touch been in business, I guess? Or how
13 long have you had the publication In Touch?

14 A Before my time. I've been around 20 years.

15 Q Oh, okay. So -- Great. So let me take you to some select
16 pages.

17 I'm going to show you on your screen page 32 and 34 of
18 the Court's Exhibit 26 -- I'm sorry 3234 and 3235.

19 Can you see those?

20 A I can see the screen.

21 Q Is it showing up on the screen?

22 A I can see the screen, yes.

23 Q So you see those documents?

24 A Yes.

25 Q Okay. Can you tell me what those documents are?

1 A It's an article on technology. And I'm not sure if it's
2 part of the representation that we had sent over. Do you have
3 the page number on that?

4 Q Here, if you scroll down, do you see that this is a section
5 of --

6 A Sixty-seven through 78, okay.

7 Q I'm sorry, ma'am. You can't be looking at your own
8 documents. I'm directing you to look at --

9 A I was going to match it because that's what I looked at
10 before.

11 THE COURT: All right. Go ahead.

12 BY MR. RAPHAEL:

13 Q Go ahead and match it then.

14 A Okay.

15 Q Okay. So I'm looking -- I want you to look at -- On the
16 screen, do you see page 3234 on the screen?

17 A I can see the screen. I'm not sure -- 3234 or where those
18 numbers are coming from.

19 Q If you look at --

20 THE COURT: Pull up the bottom of the screen.

21 BY MR. RAPHAEL:

22 Q At the bottom of the screen.

23 A I don't think I have a full screen.

24 Q Let me see.

25 A My screen shows about three-quarters of it; not the whole

1 page. Okay. So I can see then -- Okay. Okay.

2 Q Do you see that number there?

3 A Yes, I do.

4 Q Okay. Looking at 3234, do you see that this document is
5 page seven of the summer 2005 In Touch magazine?

6 A Yes.

7 Q Okay. All right. And if you look at page 3235, do you see
8 the bottom of the screen?

9 A Yes.

10 Q You can see that's page 15 of the same --

11 THE COURT: One second, Counsel. You cannot testify.
12 You have to proceed --

13 MR. RAPHAEL: I'm sorry.

14 THE COURT: -- using a different format. This is not
15 a deposition.

16 BY MR. RAPHAEL:

17 Q Looking at page 3235, can you identify what this document
18 is?

19 A That's also from the In Touch magazine.

20 Q From what issue?

21 A Summer 2005.

22 Q Okay. What page?

23 A It's page 15 in our issue.

24 Q Right. Okay.

25 MR. RAPHAEL: So I'd move to have this entered into

1 evidence.

2 THE COURT: Is there an objection?

3 MR. BORCIA: Relevance.

4 THE COURT: Do you wish to be heard at sidebar,
5 Counsel?

6 MR. BORCIA: Yes.

7 THE COURT: All right.

8 (A sidebar was held.)

9 (The following proceedings were held at sidebar.)

10 MR. BORCIA: Again, the document is -- document is
11 partly -- a portion of a newsletter or a magazine that starts,
12 I guess, on page seven. I'm not sure what else is -- Nothing
13 else has been produced. Page seven on the bottom, then we go
14 to page 15.

15 So this is, again, part of another document never
16 introduced in the case. The document has not been established
17 it was received by Sogro. The document has no reference to
18 FACTA. I have no idea what the relevance of this document is.

19 MR. RAPHAEL: First off, now we're getting
20 problematic. Counsel is saying that this has never been
21 received or filed with this case, and on the actual document we
22 can see that it is a document that has been submitted to the
23 Court as early as April.

24 MR. BORCIA: What I said was --

25 THE COURT: Let him finish. Let him finish. Go

1 ahead, Mr. Raphael.

2 MR. RAPHAEL: All right. It was attached to this
3 witness's affidavit previously; plus, in Mr. Solus's deposition
4 on -- Mr. Solus -- Question: Okay, let me ask you this.
5 You've been handed what's been marked as Exhibit 22, which is
6 excerpts from In Touch summer 2005. Answer: In Touch from
7 Wisconsin Innkeepers Association? Question: That's what it
8 looks like on the top left there. Answer: Yeah. Question:
9 It says WIA. Did you get the In Touch magazine as of the
10 summer -- as of summer of 2005? Answer: I believe so.

11 THE COURT: Objection is overruled.

12 (The following proceedings were held in the presence
13 of the jurors.

14 THE COURT: The objection overruled. Proceed.

15 MR. RAPHAEL: Actually, I'm going to go back here.

16 THE COURT: Overruled.

17 BY MR. RAPHAEL:

18 Q Okay. So now I'd ask that the screen of this be unblocked
19 so that the witnesses (sic) can see, and I move to have this --

20 THE COURT: The screen will not be unblocked at this
21 time.

22 MR. RAPHAEL: Oh, I thought I had moved to have
23 this --

24 I move to have document 3234 and 3235 entered into
25 evidence.

1 THE COURT: Again, is there an objection beyond what
2 we've discussed already?

3 MR. BORCIA: No, Your Honor.

4 THE COURT: They're received.

5 MR. RAPHAEL: Now, I'd ask that the jury be given
6 access to the view the document. Not on my end or my end?

7 THE COURT: No, it's not on yours. Can the jury see
8 their screens?

9 (Yeses were heard from the jurors.)

10 BY MR. RAPHAEL:

11 Q So I'm blowing this up for you so that you can see what the
12 jury is seeing. You can see at the top of the screen the WIA.
13 That stands for --

14 THE COURT: One second. You cannot explain things,
15 Counsel. Let the witness explain.

16 BY MR. RAPHAEL:

17 Q Can you explain to me what the WIA is at the top?

18 A Wisconsin Innkeepers Association. That was our name at the
19 time of this publication.

20 Q This particular publication was published and mailed to
21 your membership when?

22 A Summer of 2005.

23 Q And in this particular article, what was the purpose behind
24 sending this article to your membership?

25 A We publish articles that may be of interest to our members.

1 Q Okay. Why would this one be of interest to your members?

2 MR. BORCIA: Objection; foundation.

3 THE COURT: Objection sustained.

4 BY MR. RAPHAEL:

5 Q Who would have been involved in selecting this article for
6 publication in summer of 2005?

7 A The editor usually looks at different opportunities that
8 are out there that would have information that our members
9 might be interested in.

10 Q Okay. Then this article in the In Touch magazine would
11 have been mailed to Sogro, Inc. then, correct?

12 A It's part of the magazine that was mailed to them.

13 Q Now, I want you to look at -- if we can block the jury, I'm
14 going to do a couple more of these.

15 I'd like you to look at 3236. On your screen, do you
16 see that? Do you see that document there?

17 A Yes. I'm trying to -- It keeps moving on me, so I'm
18 trying --

19 Q Sorry. I'm trying to move it so you can see it.

20 A Okay. Yes, I see that.

21 Q Okay. Do you recognize this document?

22 A Yes.

23 Q And where does this document come from?

24 A This comes from the winter 2006 In Touch magazine.

25 Q And specifically what page?

1 A It is on page four.

2 Q Okay. And I'm just going to do the rest of these in
3 sequence before I get into them any further.

4 I'm going to have you look at 3237. Do you recognize
5 that document there on the screen?

6 A Yes.

7 Q Okay. Where does that document come from?

8 A Winter 2008 In Touch magazine.

9 Q What page?

10 A Page nine.

11 Q Okay. And then the next document is 3241 right there.

12 Do you recognize that document?

13 A Yes.

14 Q Okay. And that is from where?

15 A Winter 2008 In Touch magazine.

16 Q What page?

17 A Page 14.

18 Q And then the next page, same thing?

19 A Winter 2008 In Touch magazine, page 15.

20 Q Okay. That's page 3242 on the screen?

21 A Yes.

22 MR. RAPHAEL: Okay. So I'd move to have these
23 documents entered into evidence.

24 THE COURT: Objection?

25 MR. BORCIA: I think we -- What documents are we

1 talking about?

2 THE COURT: 3236, 3237, 3241 and 3242.

3 MR. BORCIA: Yes, there's an objection on relevance.

4 THE COURT: Objection overruled. They're received.

5 BY MR. RAPHAEL:

6 Q Going to 3236. I'd like to put this up on the screen.

7 Okay.

8 A Yes.

9 Q The shaded part -- The shaded part in the upper left-hand
10 corner of page 3236, can you tell me what that is?

11 A That's an article that -- It's a clip of an article that we
12 thought would be of interest to our members.

13 Q What's the article about?

14 A The title says, important credit card merchants must comply
15 with, security standards.

16 Q And do you know what standards it's talking about?

17 A I would rather let the document speak for itself. I did
18 not write it.

19 Q Do you know what the standards are that it's talking about?

20 A Yes.

21 Q What?

22 A PCI.

23 Q And what is that?

24 A Payment card industry data security standards.

25 Q Okay. Do you know if that also includes truncation of

1 credit card numbers?

2 MR. BORCIA: Objection; foundation.

3 THE COURT: Sustained.

4 MR. RAPHAEL: Withdrawn.

5 BY MR. RAPHAEL:

6 Q And I see here in the middle column at the top there's a
7 link. What is that to?

8 A It's to a securitymetrics.com summary article.

9 Q Okay. Is this document, besides it being mailed, available
10 on the Internet?

11 A No. At this time it was not.

12 Q Okay. And at that time, you mean winter of 2006?

13 A Correct.

14 Q All right. Going to the next page here, this is the -- oh,
15 I'm sorry, I thought it was -- apologize. I was confused about
16 what this was.

17 3237, this is -- Can you identify what this is again
18 for the jury?

19 A Can you scroll down so I can see the number at the bottom?

20 Q Oh, yeah, yeah. I'm sorry.

21 A And the question?

22 Q Yeah. What's this document?

23 A This is an article in our winter of 2008 In Touch magazine.

24 Q Okay. And -- Okay. What does this pertain to?

25 A The title of the article is PCI mandates, safeguard your

1 customers in your business. That's the title.

2 Q When you say, "safeguard your customers in your business,"
3 what does -- what does that entail?

4 A I would let the article stand for itself. I did not write
5 it.

6 Q Let me go to the next page of the article, 3241.

7 Do you see where -- do you see at the top -- Can you
8 tell me if this --

9 A I'm sorry, the question?

10 Q Can you tell me if this is the continuation of the article?

11 A Yes.

12 Q Okay. And in this article -- in this section of the
13 article, do you see reference to any rules or regulations in
14 there?

15 A I'm sorry. Again, I would let the article speak for
16 itself. I did not write it.

17 Q Okay. And going to the last page, 342, is that a
18 continuation of the same article?

19 A Yes.

20 Q Okay. And do you see the section about additional
21 compliance requirements?

22 A I can see that heading.

23 Q Okay. Do you see reference to the Fair and Accurate Credit
24 Transactions Act, FACTA?

25 A I would let the article speak for itself.

1 Q But do you see that section?

2 A Entitled what again?

3 Q Where it says, additional compliance requirements, the
4 middle of the page that's highlighted.

5 A Yes.

6 Q All right. Are you familiar what FACTA is or FACT Act is?

7 A I am not personally educated in that, no.

8 Q Have you heard of it before?

9 THE COURT: The Court is going to limit your
10 examination of this witness respecting this subject.

11 Ask another question, please.

12 BY MR. RAPHAEL:

13 Q All right. When would this paper have been sent out?

14 A Winter 2008.

15 MR. RAPHAEL: Nothing further.

16 THE COURT: Cross.

17 MR. BORCIA: Yes, Your Honor. Thank you.

18 C R O S S - E X A M I N A T I O N

19 BY MR. BORCIA:

20 Q Good afternoon, ma'am.

21 A Good afternoon.

22 Q I just have some follow-up for you. If we can first --

23 Let me ask you this question first. You were talking
24 about your members in your association, and you said that these
25 publications are mailed to the members; is that correct?

1 A Correct.

2 Q During a certain period of time?

3 A Correct.

4 Q Now, you don't track whether your members actually received
5 any publications, do you?

6 A No. If they're returned, they're returned; but, no, we
7 don't -- we don't track them.

8 Q You don't track whether or not your members actually read
9 the publications?

10 A We can't, no.

11 Q And you don't require your members to read the
12 publications?

13 A No.

14 Q Correct?

15 A Correct.

16 Q So the member can receive your publication, put it on their
17 desk, and leave it set there and not read it; and there's no
18 issue with your membership, correct?

19 A Correct.

20 Q You have no knowledge in this case that Mr. Solus --

21 THE COURT: Please --

22 BY MR. BORCIA:

23 Q -- Mr. Solus or anyone in Sogro read any of these
24 publications?

25 A Correct.

1 Q Now, what counsel has shown you in this case is not the
2 actual publications, correct?

3 A Correct. Well --

4 Q What he has shown you are excerpts of the publications,
5 correct?

6 A Correct.

7 Q Excepts that he selected, correct?

8 MR. RAPHAEL: Objection; relevance.

9 THE COURT: Regardless, overruled.

10 THE WITNESS: Which I provided when required.

11 BY MR. BORCIA:

12 Q Let's go to the first document that was put into evidence
13 with you, which I think is Document No. 3224.

14 Do you recall that document?

15 A Yes.

16 Q Now, that article that you refer to by itself was not sent
17 to any of the members by itself?

18 A Correct.

19 Q So this was sent in a publication, and the article appeared
20 in the publication?

21 A Correct.

22 Q And counsel had chosen not to put in the entire
23 publication?

24 MR. RAPHAEL: Objection.

25 THE COURT: Overruled.

1 THE WITNESS: So I should answer it?

2 MR. BORCIA: Yes.

3 THE WITNESS: Correct.

4 BY MR. BORCIA:

5 Q Now, what was on the cover of the publication?

6 A Offhand, I don't remember.

7 Q So you don't know if the cover of the publication had any
8 information about credit cards?

9 A I would have to look.

10 Q But that was not part of the document?

11 A Correct.

12 Q In fact, what we have is -- The first thing that counsel
13 has shown you is page seven?

14 A Correct.

15 Q So pages one through six, what are those pages?

16 A We have them back at the office. I don't know them
17 offhand.

18 Q But that's -- But your members would have received the
19 entire publication, correct?

20 A Correct.

21 Q Okay. So -- now -- And there was nothing on the cover that
22 you know of that would have highlighted the cover that said,
23 alert, look at article on page seven?

24 MR. RAPHAEL: Objection; foundation.

25 THE COURT: Overruled.

1 THE WITNESS: Without checking, I couldn't answer
2 that.

3 BY MR. BORCIA:

4 Q Now, you were asked -- You were subpoenaed for documents in
5 this case by counsel, correct?

6 A Correct.

7 Q What counsel subpoenaed you for were documents relating to
8 credit card issues, correct?

9 A Correct.

10 Q And you produced all the documents responsive to that
11 subpoena?

12 A If that's a question, then correct.

13 Q And you didn't produce the cover of this particular
14 publication, did you?

15 A No.

16 Q So is it fair to say that based upon that, the cover didn't
17 reference credit cards?

18 THE COURT: Counsel, let me just indicate something to
19 you and to the jury. Whether something is fair is relative.
20 The real question is whether or not it's accurate. So please
21 re-craft your question.

22 MR. BORCIA: Sure, Judge.

23 THE COURT: It's one of my hangups. A lot of lawyers
24 ask the question that way, and it's one of my hangups.

25 MR. BORCIA: I understand, Judge.

1 BY MR. BORCIA:

2 Q But it would be accurate to say that based upon that
3 request for information that if pages one through six would
4 have had credit card information, you would have produced it?

5 A Yes.

6 Q Now, let's go to page seven of the publication.

7 Now, I know you said you'd defer to the author. You
8 didn't author the article, correct?

9 A Correct.

10 Q But the author is Pat Miller, editor of the Texas Hotel and
11 Lodging Association. Do you see that?

12 A Yes. Yes, it's provided by another association. We had
13 permission to reprint.

14 Q Okay. And what were the -- Did you know what the Texas
15 rules were on credit cards as opposed to Wisconsin?

16 A When we publish from another state, we make sure that it's
17 relevant within our state.

18 Q Okay. Well, in this particular page, there's no reference
19 to FACTA, is there?

20 A I'm sorry.

21 Q There's no reference to FACTA in this article?

22 A I'm not sure I understand.

23 Q Well, counsel asked you questions about FACTA, the Fair and
24 Accurate Credit --

25 A I'm sorry, yes.

1 Q There's no reference to FACTA in this article?

2 MR. RAPHAEL: Objection.

3 THE COURT: What is the objection?

4 MR. RAPHAEL: Mischaracterizes the document.

5 THE COURT: Overruled. Is there any other objection?

6 MR. RAPHAEL: Foundation.

7 THE COURT: Objection sustained.

8 MR. BORCIA: The document is in evidence.

9 THE COURT: Objection sustained.

10 BY MR. BORCIA:

11 Q Do you see the words FACTA --

12 THE COURT: Let me just state the reason for
13 sustaining the objection. It's asking the witness to make a --
14 to state a legal conclusion.

15 BY MR. BORCIA:

16 Q Do you see the word FACTA on the page?

17 A I have a hard time reading this document. I'm trying to
18 find the hard cover because the numbers are all different.

19 Q I can help you out.

20 MR. BORCIA: May I approach, Your Honor?

21 THE WITNESS: I just need the page number from this
22 packet.

23 BY MR. BORCIA:

24 Q Boy, I don't know. Let me give you my copy, ma'am. That's
25 the page.

1 A Sixty-six.

2 Q Does that help you?

3 A That helps me. I can find it now. And your question
4 again?

5 Q Do you see the word FACTA on that page at all?

6 A I do not.

7 Q Do you see the word truncation?

8 A It's going to take me a little longer here.

9 Q Do you know what, we'll skip it. I don't want to waste
10 more time. We'll just move on.

11 The next document that counsel asked you about was
12 document 3236. And do you have that document in front of you?

13 A We have different numbering systems. I'm trying to catch
14 up.

15 MR. BORCIA: Can I approach?

16 THE WITNESS: All I need are the page numbers down
17 here.

18 BY MR. BORCIA:

19 Q That page is down here. Sixty-eight.

20 A Sixty-eight, okay.

21 Q So your page 68 will be our page 3236?

22 A Okay.

23 Q Now, again, this is an article from the magazine, correct?

24 A Correct.

25 Q This is -- Again, the excerpt is not the entire magazine?

1 A Correct.

2 Q And this starts on page four. And all that is produced
3 from this magazine are pages four and nine?

4 A Correct.

5 Q And the same questions I asked you before about the prior
6 magazine in terms of the publication being a broader-based,
7 that would be the same for this document?

8 A Yes.

9 Q Now, you said that this document was sent in the winter of
10 '06, or it's the winter of '06 edition?

11 A Correct.

12 Q Now, there's no reference to FACTA in this document?

13 MR. RAPHAEL: Objection; foundation.

14 THE COURT: Objection sustained.

15 BY MR. BORCIA:

16 Q Do you see the word FACTA on that page?

17 A I do not.

18 Q Do you see the words Fair and Accurate Credit Transactions
19 Act on that page?

20 A I do not.

21 Q Now, would those answers also be the same for the next page
22 in the article, which is page nine?

23 MR. RAPHAEL: Bates number?

24 BY MR. BORCIA:

25 Q 3237.

1 A To clarify, you're asking for the same two words?

2 Q You know what, I'm going to withdraw those questions. I
3 will move on.

4 Now, counsel referred you to the winter of '08 edition
5 of the magazine which would have been in document, for you,
6 starting on your page 68. So this is document -- our 3236, but
7 he referred you to, in that magazine, 3242; and your page would
8 be, looks like, 76.

9 A Which one am I going to?

10 Q 3242. I think you're on page 76, ma'am.

11 A Okay.

12 Q Do you recall that being asked about that page?

13 A Yes.

14 Q Okay.

15 A I didn't hear a question.

16 Q That's fine. So -- Now, I think you said this was the
17 winter of '08 edition?

18 A Correct.

19 Q Now, it states in here that FACTA requires
20 machine-generated debit and credit card receipts printed after
21 December 4, 2006. Do you see that?

22 A I see that.

23 Q Now, is this winter of 2008 reference to FACTA, is that the
24 first reference to FACTA in any of your publications?

25 MR. RAPHAEL: Objection; foundation.

1 THE COURT: Overruled.

2 MR. RAPHAEL: Sidebar.

3 THE COURT: Overruled.

4 THE WITNESS: I have provided, to the best of my
5 knowledge, all of the articles and information pieces that we
6 published relating to this topic.

7 MR. BORCIA: That's all I have. Thank you.

8 THE COURT: Redirect.

9 MR. RAPHAEL: Yes.

10 R E D I R E C T E X A M I N A T I O N

11 BY MR. RAPHAEL:

12 Q I'm going to have you look at 3234. And if you look on the
13 screen, it's fine.

14 Do you know when you were asked in the subpoena to
15 produce this along with the other records that was -- that were
16 produced by your organization in this case?

17 A In 2009.

18 Q Okay. And when you produced those documents, you produced
19 them not only to us but to opposing counsel, correct?

20 A I submitted them wherever I was asked to submit them.

21 Q But the subpoena that you responded to was also sent to
22 opposing counsel, counsel for Sogro. Do you recall? Do you
23 have a copy of subpoena?

24 A Yeah, I probably do in here somewhere.

25 Q The reason I ask is when --

1 THE COURT: Let her finish.

2 THE WITNESS: I have a copy of this. And your
3 question is, did it -- who did it get sent to? Is that it?

4 MR. RAPHAEL: Actually, let me see what it is so that
5 I --

6 THE WITNESS: 6/19 --

7 THE COURT: Approach.

8 THE WITNESS: I mean, this is what you sent.

9 MR. RAPHAEL: I have a copy. One second, Your Honor.
10 Okay.

11 BY MR. RAPHAEL:

12 Q I'm going to have you look at a document --

13 THE COURT: If you wish her to look at a document, it
14 must be marked for the trial record and identified by a trial
15 exhibit number.

16 MR. RAPHAEL: A moment, Your Honor. Sidebar on the
17 mechanics of it.

18 THE COURT: Approach.

19 (A sidebar was held.)

20 (The following proceedings were held at sidebar.)

21 THE COURT: We're now on the record.

22 MR. RAPHAEL: I don't have a physical copy of the
23 notice of subpoena that was sent out. I just have it on our
24 computer. I can print it later.

25 THE COURT: You can print it later?

1 MR. RAPHAEL: Any problems with me --

2 THE COURT: Proceed. I have blanked the jury's
3 screen.

4 MR. RAPHAEL: That's fine.

5 (The following proceedings were held in the presence
6 of the jurors.)

7 THE COURT: Okay.

8 BY MR. RAPHAEL:

9 Q So I'm going to show you on the screen a notice of subpoena
10 that we can mark as an exhibit at a later --

11 THE COURT: It should be identified now as Exhibit 32
12 for identification.

13 MR. RAPHAEL: All right. So we'll mark this as
14 Exhibit 32 for identification purposes. It's a two-page
15 document.

16 BY MR. RAPHAEL:

17 Q And can you identify this document for me?

18 A I do not recall seeing this document, but I can identify
19 that this says it's a notice of subpoena.

20 MR. BORCIA: Objection. Object to the foundation if
21 she can't -- has not seen the document.

22 THE COURT: Objection sustained.

23 BY MR. RAPHAEL:

24 Q Do you have in your possession a partial copy of the
25 subpoena to which you originally answered?

1 A I have the one dated 6/19/2009. It doesn't look like that.

2 Q Do you see the date on the certificate of service for this
3 document?

4 THE COURT: One second. Exhibit 32 she has not
5 identified. Ask another question unrelated to this particular
6 document.

7 MR. RAPHAEL: Okay.

8 BY MR. RAPHAEL:

9 Q All right. Okay. I'm just going to move on.

10 So with regard to the document that -- I'm sorry.

11 With regard to the document that defense counsel was
12 talking to you about, you produced those back in 2009, correct?

13 A Correct.

14 Q Okay. And so when he said that you selected specific
15 portions of the complete magazine of In Touch for summer of
16 2005 but didn't -- you know, didn't provide the entire thing,
17 did opposing counsel ever ask you for the complete copies?

18 A No.

19 Q Okay. So between 2009 and the present, you were never
20 asked by opposing counsel or anyone from his office for
21 complete copies of the editions of the In Touch magazine that
22 you provided us with selections of, correct?

23 A Correct.

24 Q Okay. If he had asked you for those, you would have
25 produced them?

1 MR. BORCIA: Objection; calls for speculation.

2 THE COURT: Objection sustained.

3 BY MR. RAPHAEL:

4 Q Did you have the complete copies to produce if you were
5 asked for them?

6 A Only the magazines. The electronic we don't still have
7 those.

8 Q But the complete copy of the summer of 2005 In Touch
9 magazine you do have?

10 A Yes.

11 Q Same with the one for 2006?

12 A We should have, yes.

13 Q Okay. And the one for 2008, as well?

14 A We should have, yes.

15 Q Okay. Okay. The other thing opposing counsel said was
16 that you don't make your membership read these magazines,
17 correct?

18 A Correct.

19 Q So there's no punishment if they don't read these
20 magazines?

21 A Correct.

22 Q You lead them to the magazines or send them to the
23 magazines, but you don't make them drink the magazines?

24 MR. BORCIA: Objection; form.

25 THE WITNESS: Figuratively.

1 THE COURT: I'm going to overrule it.

2 THE WITNESS: Figuratively speaking, correct.

3 BY MR. RAPHAEL:

4 Q But these magazines are put together in the ordinary course
5 of your association's business to provide the membership with
6 important information, correct?

7 A We put together information that we think will be helpful
8 in the running of their businesses.

9 MR. RAPHAEL: Nothing further.

10 MR. BORCIA: Just super briefly, Judge.

11 R E C R O S S - E X A M I N A T I O N

12 BY MR. BORCIA:

13 Q Ma'am, I never asked you for any documents in this case,
14 correct?

15 A I don't have a record of it. I mean -- I don't know your
16 name, so.

17 Q Jim Borcia.

18 A Okay.

19 Q No one from Sogro -- representing Sogro asked you for any
20 documents in this case?

21 A I don't think so.

22 Q You were subpoenaed by the plaintiff's counsel, correct?

23 A Correct.

24 Q And you sent the documents in response to the subpoena to
25 the person who subpoenaed you, correct?

1 A Correct.

2 Q And that was the plaintiff's counsel?

3 A Correct.

4 Q And when you sent the plaintiff's counsel the documents he
5 requested in his subpoena, he never asked you for the complete
6 copy of these magazines, did he?

7 MR. RAPHAEL: Objection; relevance.

8 THE COURT: Overruled. It's the same subject you
9 addressed.

10 THE WITNESS: I've got the document rider here that
11 specified the different information and articles that were
12 needed.

13 BY MR. BORCIA:

14 Q Right.

15 A And I believe that it's talking about documents relating to
16 and then specific topics.

17 Q So you weren't asked to produce by the party who subpoenaed
18 you, the plaintiff's counsel, the entire magazines, were you?

19 A It was not specified in that manner, no.

20 Q And after you produced the documents to the plaintiff's
21 counsel that you produced, they never contacted you and said
22 your production is not complete; we need more information?

23 A I do have an affidavit that was in 2011, but I don't think
24 I have anything -- I don't think there were any other requests.

25 Q There was no request outside of the affidavit for you to

1 produce more documents?

2 A Correct.

3 Q And there was no request for you to produce the complete
4 documents from these excerpts that you've selected and gave to
5 plaintiff's counsel, correct?

6 A Correct.

7 MR. BORCIA: That's all I have. Thank you.

8 THE COURT: Does the jury have questions of the
9 witness?

10 (No response from the jurors.)

11 THE COURT: Inasmuch as there are no more questions,
12 the Court is going to release the jury, and the witness may
13 step down.

14 Is there any reason for the witness to remain
15 available for any other testimony in this case?

16 MR. BORCIA: No, Your Honor.

17 THE COURT: All right. You're excused.

18 Members of the jury, please keep in mind the
19 admonitions that I've given you during the course of this
20 trial.

21 You are not to look at any material, go to any places,
22 or express any thoughts to anyone electronically or otherwise
23 until you have completed your work as jurors and this case has
24 been decided.

25 We will resume tomorrow morning at 8:30 or soon

1 thereafter as logistical arrangements will allow. I add that
2 because we may very well have some additional technical
3 obstacles slash hurdles, snowstorms, et cetera to deal with.

4 Have a good night. Stay warm. We'll see you
5 tomorrow.

6 THE BAILIFF: All rise.

7 THE COURT: I will see you in the morning.

8 (Proceedings concluded at 4:38 p.m.)

1 STATE OF WISCONSIN)
) SS:
2 MILWAUKEE COUNTY)

3
4
5 I, SHERYL L. STAWSKI, a Registered
6 Professional Reporter and Official Court Reporter, for the
7 United States District Court, Eastern District of Wisconsin, do
8 hereby certify that the above proceedings were reported by me
9 on the 24th day of February, 2015, and reduced to writing under
10 my personal direction and is a true, correct and complete
11 transcription of my computer-aided transcription of my
12 stenographic notes.

13
14 Dated at Milwaukee, Wisconsin, this 15th
15 day of April, 2015.

16 s/ Sheryl L. Stawski

17 Sheryl L. Stawski
18 Official Court Reporter
19 United States District Court
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